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## Title Information: MID192643

### Search summary

Date/Time of search	22-06-2020 14:59:38
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Payment reference number	VU73-6WX3-QQNR-Y6VZ
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**Section A****MID192643**

## Property

Date of first registration	19-05-2004
Date title sheet updated to	18-08-2019
Date land certificate updated to	19-10-2017
Hectarage Code	0.5
Real Right	OWNERSHIP
Map Reference	
Title Number	MID192643
Cadastral Unit	MID192643
Sasine Search	
Property address	NEW STREET, EDINBURGH
Description	Subjects cadastral unit MID192643 on the east side of NEW STREET, EDINBURGH edged red on the cadastral map being 0.53 hectares in measurement on the Ordnance Map; together with (one) the rights specified in Deed of Conditions in Entry 7 of the Burdens Section and (two) the subsisting rights to real burdens specified in the Schedule of Real Burdens below.
Notes	1. The minerals are excepted. The conditions under which the minerals are held are set out in the Feu Disposition in Entry 1 of the Burdens Section.

## Schedule of Particulars Relative to Subsisting Rights to Real Burdens

Entry No	Benefited Property	Real Burdens	Burdened Property
1	The subjects in this title and other subjects.	Deed of Conditions, registered 18th Feb. 2016, being entry 7 of the Burdens Section.	The community as defined in the said Deed of Conditions.

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Section B

MID192643

Proprietorship

LEGAL & GENERAL PENSIONS LIMITED incorporated under the Companies Acts, (Registered Number 05935873), Registered Office at 1 Coleman Street, London, EC2R 5AA.

Entry number	1
Date of registration	19-10-2017
Date of Entry	16-10-2017
Consideration	£20,841,671

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Section C

MID192643

Securities

Entry number	1
Specification	Standard Security by said LEGAL & GENERAL PENSIONS LIMITED to THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT, of 100 Parliament Street, London, SE1A 2BQ.
Date of registration	19-10-2017

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## Section D

**MID192643**

### Burdens

Number of Burdens: 9

#### Burden 1

Feu Disposition by The Lord Provost, Magistrates and Council of the City of Edinburgh to The Scottish Motor Traction Company Limited and their successors and assignees (hereinafter referred to as "the Feuars"), recorded G.R.S. (Edinburgh) 24 Sep. 1926, of 3.55 acres of ground, of which the subjects in this title from part, contains the following:

(First)

There shall be reserved to us and our foresaids

(a) the whole coal, shale, limestone, marl, ironstone, clay, freestone, sandstone, slate, marble and other stone sand and all other stones, mines, metals, minerals and fossils though not hereinbefore specially enumerated within or under the said subjects hereinbefore disposed;

(b) full power and liberty to us and our foresaids or any person authorised by us to search for, work, win, raise, calcine and carry away the same and further to maintain the sinkings, wells, bores, shafts, mines and tunnels at present existing in and through the said subjects hereinbefore disposed and to make such additional mines and tunnels through the same as we or they may think fit and to do everything necessary for all or any of these purposes but, except as aftermentioned, without entering on the surface of the said subjects hereinbefore disposed:

(Second)

The buildings to be erected on the said piece of ground hereinbefore disposed shall not without the express consent of us or our foresaids exceed to the eaves twenty five feet in height above the level of the centre of the carriageway in New Street at its junction with Market Street but this provision shall not apply to the portion of the subjects hereinbefore disposed fronting Calton Road and extending southwards therefrom for a distance of fifty feet. The buildings to be erected on said last mentioned portion shall not exceed in height thirty-eight feet to the eaves; The plans, elevations and sections of all buildings at any time proposed to be erected upon the said piece of ground hereinbefore disposed or of any additions to or alterations on any such buildings shall be submitted to and approved of by us or our foresaids before any such operations are commenced: Further it is hereby declared that the external walls of any buildings at any time on the said piece of ground hereinbefore disposed which are not constructed of stone shall be harled unless we or our foresaids expressly agree to any other material or method of treatment; and the roofs so far as not covered with glass shall be covered with slates, tiles or corrugated asbestos sheets of a dark blue-grey or dark natural stone colour to be approved of by us or our foresaids; Declaring, however, that we consent to the building line along the western boundary being the eastern side of New Street; Further no advertisements, notices or signs of any description shall be at any time painted, displayed or exhibited upon or affixed to the roofs or northern elevations of the said buildings or any of them other than plain black or white letters stating the name of the person,

firm or company carrying on business in the premises and a short general intimation of the nature of the business so carried on which lettering if used shall be put up and maintained by the Feuars to the satisfaction of the City Architect of Edinburgh for the time being. The Feuars shall be bound on their entry to the subjects above disposed to erect a sufficient fence along the eastern boundary of the said subjects and thereafter to maintain and, when necessary, to renew the same. Further in the event of the Feuars altering the level of the said piece of ground hereinbefore disposed along or near the said eastern boundary they shall be bound to form and maintain on the said subjects such slopes, embankments or erect and maintain such retaining walls as shall be sufficient to prevent injury or damage to the property retained by us or the buildings at any time thereon.

Note: The Conditions in the said Feu Disposition have been varied in terms of the Minutes of Waiver in Entries 3 and 4 of this Section.

## **Burden 2**

Minute of Waiver, recorded G.R.S. (Midlothian) 19 Jul. 1949, by The Lord Provost, Magistrates and Council of the City of Edinburgh, superiors of 3.55 acres of ground, of which the subjects in this title form part, modifies the terms of the Feu Disposition in entry 1 of this section as follows:

We hereby (subject to the provision afterwritten) WAIVE and DISCHARGE all right competent to us to object to the buildings erected and to be erected by the said the Scottish Motor Traction Company Limited on that portion of the said piece of ground extending northwards along New Street a distance of Two hundred and eight feet or thereby from the south-west corner of the said piece of ground and measuring in depth twenty eight feet eastwards from New Street foresaid on the ground that the said buildings exceed the said height of twenty five feet above mentioned provided that the said buildings shall not exceed to the top of the parapet thirty seven feet in height above the level of the centre of the carriageway in New Street at its junction with Market Street; But Declaring that we grant these presents always without prejudice to the said Feu Disposition and the whole conditions contained therein so far as not hereby waived.

## **Burden 3**

Minute of Waiver, recorded G.R.S. (Midlothian) 13 Mar. 2000, by The City of Edinburgh Council, Superiors 3.55 acres of ground, of which the subjects in this title form part, modifies the terms of the Feu Disposition in entry 1 of this section as follows:

CONSIDERING THAT the said Feu Disposition provides that except on a portion of the piece of ground fronting Calton Road and extending southwards therefrom for a distance of fifty feet the buildings to be erected on the said piece of ground shall not without the express consent of the superiors exceed to the eaves twenty five feet in height above the level of the centre of the carriageway in New Street at its junction with Market Street but that this provision shall not apply to the portion of the piece of ground fronting Calton Road and extending southwards therefrom for a distance of fifty feet the buildings to be erected on the last mentioned portion not to exceed in height thirty eight feet to the eaves and that the plans, elevations and sections of all buildings at any time proposed to be erected upon the piece of ground or of any additions to or alterations on any such buildings shall be submitted to and approved by the superiors before any such operations are commenced; And further that the external walls of any buildings at any time on

the piece of ground which are not constructed of stone shall be harled unless the superiors expressly agree to any other material or method of treatment and that the roofs so far as not covered by glass shall be covered with slates, tiles or corrugated asbestos sheets of a dark blue grey or dark natural stone colour to be approved by the superiors; We waive the foregoing conditions to the same extent and effect as if they had never been contained in the said Feu Disposition; But declaring that we grant these presents always without prejudice to the said Feu Disposition and the whole conditions contained therein so far as not hereby waived; And we grant warrandice from our future facts and deeds only.

## **Burden 4**

Minute of Agreement between The City of Edinburgh Council (who and whose successors are hereinafter referred to as "the Council") and PK2K Limited (who and whose successors in ownership of the Development subjects are hereinafter referred to as "the Owners"), recorded G.R.S. (Midlothian) 24 Nov. 2003, contains the following:

WHEREAS:

(One)

The Council is the planning authority for the City of Edinburgh in terms of Section 1 of the Town and Country Planning (Scotland) Act 1997 (hereinafter referred to as "the 1997 Act"); The Council is entitled in terms of Section 75 of the 1997 Act to enter into an agreement with any person interested in land in its district (insofar as the interest of that person enables him to bind the land) for the purpose of restricting or regulating the development or use of the land either permanently or during such period as may be prescribed by the agreement.

(Two)

The Owners have applied to the Council in terms of application number 01/00949/FUL for planning permission for the demolition of buildings on the Development Subjects and the erection of a mixed office, arts, leisure, open space, retail and residential development to be known as Calton Gate, New Street, Edinburgh (hereinafter referred to as "the Development").

(Three)

The Council has resolved to grant the said planning permission (hereinafter referred to as "the Planning Permission") subject inter alia to the Owners entering into an agreement under Section 75 of the 1997 Act to secure the future provision of a bridge link to adjoining property and to the completion of certain other works which will assist in the comprehensive development of the area in which the Development Subjects are located (hereinafter referred to as "this Agreement").  
NOW THEREFORE THE PARTIES HERETO HAVE AGREE AS FOLLOWS:-

(First)

Definitions and Interpretation

(1) For the purposes of this Agreement the following terms shall have the meanings ascribed to them:-

"the Bridge" means a pedestrian bridge with associated supports and infrastructure to link the Development to Regent Road over the Bridge Area designed by the winner of the Design Competition;

"the Bridge Area" means an area of ground at an agreed podium level in the Development not exceeding 600 square feet in gross external area located within the area shared red on the Plan the precise location of which will be agreed in terms of the provisions of Clause (Fifth) of this Agreement;

"the Bridge Construction Agreement" means a written agreement between the Council and the Owners detailing

(a) the precise location of the Bridge Area;

(b) the design, technical specifications and loadings of the Bridge;

(c) the proposed date of commencement of the construction operations and

(d) if deemed necessary an integrated construction programme for the Bridge and the Development Works and incorporating a code of practice to regulate or, as the case may be, address the following matters namely:-

(one) the carrying out of the Bridge construction operations within the Development Subjects including the movement of site traffic, the location of any necessary compounds, the protection of services and installations serving the Development and the identification of any necessary temporary access and wayleaves over other parts of the Development Subjects outwith the Bridge Area;

(two) dispute resolution;

(three) the provision of public indemnity insurance;

(four) the provision of indemnities and

(five) the provision of collateral warranties;

"the Bridge Contribution" means the sum of TWO HUNDRED AND FIFTY THOUSAND POUNDS (£250,000) STERLING to assist the Council in the construction and other costs of the Bridge;

"the Design Competition" means the competition to select a design of the Bridge organised by the Council;

"the Design Competition Contribution" means the sum of FIFTY THOUSAND POUNDS (£50,000) STERLING to assist in the funding of the Design Competition and related matters relative to the provision of the Bridge;



"the Development Subjects" means the subjects registered under title number MID60240;

"the Development Works" means the works and operations involved in the construction of the Development in accordance with the Planning Permission and all other necessary consents but excluding always, for the avoidance of doubt, any work relating to the demolition and clearance of any buildings currently erected on the Development Subjects as at the date of registration of this Agreement;

"the Development Works Commencement Date" shall be at the date on which the Owners intend to commence the Development Works on the ground;

"the Education Contribution" means the sum of SIX THOUSAND AND SIX POUNDS (£6,006) STERLING to assist in alleviating the shortfall of accommodation in those schools situated in the locality of the Development;

"the Gladstone Court Works Contribution" means the sum of SEVENTY FIVE THOUSAND POUNDS (£75,000) STERLING to assist in the completion of the Gladstone Court Works;

"the Gladstone Court Works" means works for the upgrading of the hard landscaping to Gladstone Court thereby to assist in the integration of the Development with the surrounding environment;

"the Gladstone Court Works Commencement Date" means the date on which the Council, having taken due account of the completion requirements set out in of sub Clause (Fourth) (3) of this Agreement, intends to commence the Gladstone Court Works on the ground;

"the Longstop Date" means the fifth anniversary of the date of first occupation of the Development;

"the Plan" means the demonstrative plan annexed and signed as relative to this Agreement;

"Practical Completion" means the completion of any works for which the relevant authority has issued a Certificate of Practical Completion.

(2) Time is of the essence in this Agreement unless stated otherwise.

(Second)

#### Development Works

The Owners will no later than fourteen days prior to the date on which they intend to commence the Development Works confirm to the Council in writing the Development Works Commencement Date.

(Third)

#### Education

The Education Contribution will be paid by the Owners to the Council on the date falling five working days after the Development Works Commencement Date.

(Fourth)

Gladstone Court

(1) The Council will no later than fourteen days prior to the date on which they intend to commence the Gladstone Court Works confirm to the Owners in writing the Gladstone Court Works Commencement Date

(2) The Gladstone Court Works Contribution will be paid by the Owners to the Council in two equal instalments as follows:-

(a) THIRTY SEVEN THOUSAND FIVE HUNDRED POUNDS (£37,500) STERLING on the date falling five working days after the Gladstone Works Commencement Date, and

(b) THIRTY SEVEN THOUSAND FIVE HUNDRED POUNDS (£37,500) STERLING on the date falling five working days after the date on which the relevant certificate confirming Practical Completion of the Gladstone Court Works is exhibited to the Owners.

(3) In the event that the Council have not completed the Gladstone Court Works by the Longstop Date then the Council will repay the Gladstone Court Works Contribution (with interest accrued thereon).

(Fifth)

The Bridge

The following provisions will apply to the Bridge:

(1) The Owners will pay the Design Competition Contribution to the Council on the date falling five working days after the Council has commenced the Design Competition which the Council will intimate in writing to the Owners;

(2) To facilitate the design of the Bridge and its integration with the Development, the Owners will make available to all entrants to the Design Competition such technical and other information as the Council acting reasonably may specify, including details of the proposed level of the landing stage deck podium referred to in paragraph (9) below.

(3) Immediately following receipt of the Design Competition Contribution the Council will use all reasonable endeavours to organise the Design Competition with a view to ensuring that the final design and technical data concerning the Bridge are made available to the Owners as soon as is reasonably practicable and the Council will advise the Owners of its progress in writing if requested until such time as a decision can be taken to select a winner.

(4) A representative of the Owners will be invited by the Council to join the panel of judges who selects the winner of the Design Competition.

(5) As soon as reasonably practicable after (i) the winner of the Design Competition is announced; (ii) the Council notifies the Owners in writing that sufficient funding has been secured to construct the Bridge, and (iii) planning permission is granted for the Bridge the Council and the Owners, following consultation with the winner, will agree and execute the Bridge Construction Agreement.

(6) In the event that the Council is unable to provide the Owner with the written notification referred to in sub-paragraph (5) above by the Development Works Commencement Date, the Council and the Owners as soon as reasonably practicable thereafter (and in any event not less than one month prior to the date on which the owners anticipate being ready to construct that part of the Development lying ex adverso the Bridge Area) will agree following consultation with winner (if one has already been selected) of the Design Competition (a) the precise location of the Bridge Area (b) the podium level at which the landing stage deck referred to in paragraph (9) below is to be constructed (c) the design loadings and design criteria of the Bridge and (d) the time-scale for construction of the said landing stage deck and its integration with the Development Works.

(7) In the event that the Design Competition has not been judged and/or the Council has still to provide the Owner with the written notification referred to at sub paragraph (5) above by the date on which agreement is reached on the matters referred to (a)-(d) inclusive in paragraph (6) above, the technical details comprising such agreement will be incorporated into and form part of the Design Competition specification provided to entrants or, as the case may be, the Bridge Construction Agreement.

(8) For the avoidance of doubt, the Owners shall be entitled to commence the Development, including the demolition and clearance of any buildings currently erected on the Development Subjects and the Development Works in accordance with the Planning Permission and all other necessary statutory consents, at such time and in accordance with such phasing arrangements as may be authorised therein without reference to the Design Competition and/or the securing by the Council of sufficient additional funding for the construction of the Bridge.

(9) Subject to the provisions of paragraphs (5), (6) and (7) above and in accordance with any agreements reached thereunder, the Owners will, as part of the Development construct at their expense a landing stage deck for the Bridge with provision for the Bridge support and relative access tower to be fixed thereto.

(10) Within 28 days of whichever is the earlier of (i) the date of final execution of the Bridge Construction Agreement or (ii) the date on which agreement is reached regarding the matters referred to at (a)-(d) inclusive in paragraph (6) above, the Owners will convey the Bridge Area to the Council, such conveyance being at the Council's discretion in the form of either (a) the outright transfer of their feuhold interest free of consideration or (b) the grant of a long lease for a period of not less than ninety nine years at a rent of ONE POUND (£1) STERLING per annum, but in either case with each party paying its own expenses.

(11) The Council will ensure that the Bridge is constructed in accordance with the terms and conditions of the Bridge Construction Agreement and thereafter maintained by the Council and will keep the Owners advised on the progress of the Bridge construction works and, in particular, but without prejudice thereto, will allow the Owners to attend and make representations at formal site meetings and will supply the Owners forthwith with all minutes of such meetings on request.

(12) To allow the Council to construct the Bridge, the Owners will provide (a) an adequate right of way from Calton Road to Calton Park, and (b) such an additional area within the Development Subjects as is reasonably required to allow such construction to take place as the precise route thereof and location thereof may vary from time to time as directed by the Owners, acting reasonably.

(13) In the event that the Council are for whatever reason unable to ensure that the construction of the Bridge commences on the date agreed in the Bridge Construction Agreement, the Council will be required to obtain the prior written consent of the Owner before operations finally commence, such consent not to be unreasonably withheld or delayed.

(14) The Bridge Contribution will be (i) paid by the Owners to the Council on the date falling five working days after the Council has intimated to the Owners in writing that the contract for the construction of the bridge has been entered into and (ii) forthwith lodged by the Council on deposit receipt in the joint names of the Owners and the Council pending execution of the Bridge Construction Agreement.

(15) No later than fourteen days following the last date of execution of the Bridge Construction Agreement, the Owners will authorise the release and payment to the Council of the Bridge Contribution (with interest accrued thereon) from the deposit receipt.

(16) In the event that the written notification referred to in paragraph (5) above has not been served on the Owners by the Council before the Longstop Date, the Council will forthwith:

(a) If called upon to do so by the Owners, re-convey the title to (or as the case may be renounce the lease of) the Bridge Area to the Owners free of consideration with each party paying its own expenses;

(b) authorise the release and re-payment to the Owners of the Bridge Contribution (with interest accrued thereon) from the deposit receipt, and

(c) deliver a validly executed discharge of this Agreement to the Owners.

(Sixth)

Should the Planning Permission be revoked or in any way fail prior to the Development Works Commencement Date, this Agreement shall itself be deemed to have fallen and the Council shall grant forthwith to the Owners a validly executed Discharge thereof and repay to the Owners within fourteen day of the date of such revocation or falling the Design Competition Contribution with interest at three per centum above the Base Rate from time to time of the Royal Bank of Scotland plc from the due date until payment.

(Seventh)

In the event of the parties hereto agreeing to a variation of the terms of this Agreement, the Council shall grant a Discharge thereof and contemporaneously the parties shall enter into a fresh Agreement in terms identical to the terms of this Agreement, subject only to the said variation.

(Eight)

The Owners shall not transfer or assign their rights and obligations under this Agreement or dispose of their interest in the Development Subjects prior to the registration of this Agreement in the said Division of the General Register of Sasines.

(Ninth)

Any dispute of any kind which may arise between the parties hereto regarding this Agreement shall be referred to the decision of an arbiter to be mutually agreed by the parties or failing such agreement appointed by the Sheriff of the Lothians and Borders at Edinburgh on the application of either party and the decision of such arbiter, including any award of expenses, shall be final and binding on the parties and failing such award, the cost of any such arbitration shall be borne equally by the parties.

Note 1: a copy of the Plan is incorporated into this title sheet in terms of section 10(3)(b) of the Land Registration etc. (Scotland) Act 2012;

Note 2: the area shaded red on the Plan has been edged blue on the cadastral map.

## **Burden 5**

Agreement, registered 21 May 2013 between City of Edinburgh Council ("the Council"), City of Edinburgh Council ("the First Proprietor") and Artisan Investment Projects 10 Limited ("the Second Proprietor"), is incorporated into this title sheet in terms of section 10(3)(a) of the Land Registration etc. (Scotland) Act 2012 - copies of the plans nos 1 to 8 to the said Agreement are included in this title sheet as supplementary data nos 2 to 9 to the title sheet.

Agreement, registered 21 May 2013 between City of Edinburgh Council ("the Council"), City of Edinburgh Council ("the First Proprietor") and Artisan Investment Projects 10 Limited ("the Second Proprietor"), is incorporated into this title sheet in terms of section 10(3)(a) of the Land Registration etc. (Scotland) Act 2012 - copies of the plans nos 1 to 8 to the said Agreement are included in this title sheet as supplementary data nos 2 to 9 to the title sheet.

## **Burden 6**

Minute of Agreement in terms of Section 75 of the Town and Country Planning (Scotland) Act 1997, registered 26 Mar 2014, between The City of Edinburgh Council (who and whose successors as Planning authority and roads authority respectively are hereinafter referred to as "Council") and The City of Edinburgh Council (who and whose successors and assignees in ownership of the Council Subjects are hereinafter referred to as the "First Proprietors") and Artisan Investment Projects 10 Limited (who and whose successors and assignees in ownership of the Artisan Subjects are hereinafter referred to as the "Second Proprietors") in the following terms:

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BACKGROUND:

A That the Council is the planning authority for the City of Edinburgh in terms of the 1997 Act;

B That the Council is the roads authority for the City of Edinburgh in terms of the Roads (Scotland) Act 1984 (as said section 151 is amended by section 180 and paragraph 135(10) of Schedule 13 to the Local Government etc. (Scotland) Act 1994);

C That the Council as planning authority is entitled in terms of Section 75 of the 1997 Act, to enter into an agreement with any person interested in land in its district (in so far as the interest of that person enables him to bind the land) for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be prescribed by the agreement;

D That the First Proprietors are the heritable proprietors of the Council Subjects as hereinafter defined;

E That the Second Proprietors are the heritable proprietors of the Artisan Subjects as hereinafter defined;

F That the Northern Range Application and the Southern Range Application have been made to the Council;

G That the Council has resolved to grant the Northern Range Permission and Southern Range Permission subject inter alia to an agreement under Section 75 of the 1997 Act being entered into;

H That the parties have entered into the PA 1 Section 75 Agreement;

I That the parties have entered into the Existing Phase 2 Section 75 Agreement;

IT IS AGREED:

## 1. DEFINITIONS

"1997 Act" means the Town and Country Planning (Scotland) Act 1997;

"231 Canongate" means ALL and WHOLE the subjects known as 231 Canongate and 2 and 4 New Street, Edinburgh registered under Title Number MID60246;

"Affordable Business Space" means entry level accommodation which is made available for lease for business purposes (which purposes shall be taken to include any use falling within class 4 of the Schedule to the Town and Country Planning (Use Classes) (Scotland) Order 1997);

"Affordable Housing Unit" means a residential unit which is social rented housing, mid rent housing, shared equity housing, shared ownership housing, discount low cost sale, housing without subsidy or other format of affordable housing tenure which is agreed by the Council as meeting the requirements of persons in housing need and which unit is constructed to Lifetime Homes Standard as defined in the Council's document "New Build Target Standards - A Practice Note on Design Quality in New Affordable Housing Development", provided that, in the event that the agreed form of affordable housing units do not attract public funds in respect of their provision, the Council may waive or vary the requirement that such units be constructed to Lifetime Homes Standard;

"Affordable Housing Contracts" means



(a) a contract or contracts for sale by the Proprietors of land within or forming part of the Agreement Subjects for the purposes of constructing Affordable Housing Units; or

(b) a contract or contracts entered into by the Proprietors for sale or lease of Affordable Housing Units to persons in housing need; or

(c) such other contract or contracts as may be agreed by the Council for the purposes of providing Affordable Housing Units;

"Agreement Subjects" means the subjects comprising the Artisan Subjects and the Council Subjects;

"Arches Development" means that part of the Southern Range Development lying to the west of Cranston Street the extent of which is indicated by a broken dark blue line on Plan 12;

"Artisan Subjects" means the subjects comprising New Street Car Park, 231 Canongate and the Canongate Flats;

"Caltongate Affordable Housing Requirement" means the requirement that 25% of the Residential Units comprising part of the Caltongate Development shall be Affordable Housing Units;

"Caltongate Development" means the development within the Caltongate Site comprising any or all of the PA1 Development, PA2 Development, PA3 Development, PA4A Development, PA5 Development, PA6 Development, PA7 Development, Northern Range Development, and Southern Range Development and includes any amendment to the Phase 2 Development which includes the provision of Housing Units which would give rise to the requirement for provision of Affordable Housing Units;

"Caltongate Site" means the site comprising the PA1 Site, the PA2 Site, the PA3 Site, the PA4A Site, the PA5 Site, the PA6 Site and the PA7 Site, the Northern Range Site and the Southern Range Site, the extent of which is shown delineated in red on Plan 1;

"Canongate Flats" means the nine flatted properties at 221 and 227 Canongate, Edinburgh, more particularly described in paragraph 1 of Part 1 of the Schedule;

"Canongate Venture" means the building known as the Canongate Venture at 5 New Street shown hatched in blue on Plan 1;

"Car Club Contribution" means a contribution of EIGHTEEN THOUSAND POUNDS (£18,000) which shall be applied by the Council towards the Edinburgh Car Club;

"Car Club Contribution Payment Date" means the date on which the Car Club Contribution is to be paid by the Proprietors being 10 working days after the PA4A Relevant Date of Entry;

"Commencement Date" means the date(s) on which the each of the Planning Permissions is implemented by the carrying out of any Material Operation, which date(s) shall be determined in accordance with the provisions of section 27 of the 1997 Act;



"Community Facility" means the use of an area within the Agreement Subjects or such other site under the control of the Proprietors (which, for the avoidance of doubt shall be deemed to include the PA 1 Site even after it is transferred to a Registered Social Landlord or the Council) for community uses as may be agreed between the Council and the Proprietors; which area shall not be required to be larger than sixty six square metres in area;

"Community Facility Contract" means a contract for sale or lease of the Community Facility between the Proprietors and the Council or a Community Organisation in terms of the details approved in clause 8.1;

"Community Organisation" means a company limited by guarantee the articles of association of which include the following-

- (a) a definition of the community to which the company relates;
- (b) provision enabling the company to enter into a Community Facility Contract;
- (c) provision that the company must have no fewer than 20 members;
- (d) provision that the majority of the members of the company is to consist of members of the community
- (e) provision whereby the members of the company who consist of members of the community have control of the company;
- (f) provision ensuring proper arrangements for the financial management of the company and the auditing of its accounts; and
- (g) provision that any surplus funds or assets of the company are to be applied for the benefit of the community;

"Commuted Sum for Affordable Housing" means the sum calculated by the following formula:-

$$A = B \times C$$

where:-

A means the sum to be paid

B means the number of Housing Units in respect of which a commuted sum is to be paid in lieu of the provision of Affordable Housing Units; and

C means the sum of TWENTY FIVE THOUSAND POUNDS (£25,000) STERLING

which sum is to be applied by the Council for the provision of Affordable Housing Units;

"Completion of Construction" means, in respect of any residential unit, the earlier of (i) the date of grant of permission by the Council for temporary occupation or use, or (ii) the Date of Practical Completion;

"Council's Canongate Properties" means the nine flatted dwelling houses formerly owned by the Council at 221 and 227 Canongate known as numbers 221/2 (GF), 221/4 (1F2), 221/8 (3F2), 227/2 (GF1), 227/6 (2F1), 227/1 (GF2), 227/3 (1F2), 227/11 (3F2) and 227/19 (2F3), Canongate, Edinburgh;

"Council Subjects" means the subjects owned by the Council more particularly described in paragraph 2 of Part 1 of the Schedule;

"Date of Practical Completion" means the date or dates on which a Practical Completion Certificate is issued in respect of any part of the Development;

"Discount Low Cost Sale" means a residential unit sold at a percentage discount of its open market value for households in housing need;

"Education Contribution" means any sum of money payable under this Agreement for the purpose of alleviating accommodation pressures in the Council's schools in Edinburgh;

"Education Contribution (PA4A)" means the sum of FIFTY FIVE THOUSAND EIGHT HUNDRED POUNDS (£55,800) indexed to the date of payment, which sum shall be applied by the Council towards alleviating accommodation pressures at James Gillespie's High School, Edinburgh;

"Education Contribution (PA6)" the sum of TWO THOUSAND FOUR HUNDRED AND SEVENTY FOUR POUNDS (£2,474) Indexed to the date of payment, which sum shall be applied by the Council towards alleviating accommodation pressures at James Gillespie's High School, Edinburgh;

"Edinburgh Tram" means the proposals to construct and operate tram lines in Edinburgh, including the provision of tram vehicles, tram stops, and all associated infrastructure, plant and equipment, as authorised by the Edinburgh Tram (Line One) Act 2006 and the Edinburgh Tram (Line Two) Act 2006 as may be amended from time to time;

"Existing Phase 2 Section 75 Agreement" means the minute of agreement entered into amongst the City of Edinburgh Council, the City of Edinburgh Council and Artisan Investment Projects 10 Limited in terms of section 75 of the 1997 Act dated and registered under title numbers MID60246, MID65316, MID63173, MID96866, MID46342, MID42053, MID83645, MID85633, MID20639, MID76797 and MID60240 and recorded in the General Register of Sasines for the County of Midlothian on 21 May 2013;

"Hotel One" means the hotel to be constructed as part of the Southern Range Development, the extent of which is indicated by a broken green line on Plan 12;

"Hotel Two" means the hotel to be constructed as part of the Southern Range Development the extent of which is indicated by a broken red line on Plan 12;

"Housing without Subsidy" means non-subsidised Affordable Housing Units with conditions attached to the missives to maintain the units as Affordable Housing Units to subsequent purchasers, such purchasers being persons in housing need;

"Index" means the General Building Cost Index firm figures as published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors on a monthly basis, or if that index ceases to be published or the basis upon which such index is calculated is changed or substantially rebased, such substitute or alternative index most likely to achieve an equivalent result as the parties may agree or, in the absence of agreement, as shall be determined pursuant to clause 18;

"Indexed" means in respect of any sum of money the relevant sum increased in accordance with the following formula:

$$(b \div a) \times c$$

Where:

a equals the Index published as at the last date of execution of this Agreement;

b equals the Index for the latest month at the date of expiry of the relevant period for which an Index has been published;

c equals the relevant sum to be Indexed;

"Junction Works" means works for the improvement of the junction of St Mary's Street, Jeffrey Street, Canongate and High Street;

"Junction Works Capped Sum" means the sum of FORTY THOUSAND POUNDS (£40,000) STERLING;

"Low Cost Home Ownership Housing" means housing sold in perpetuity at a value below open market value at a price to be agreed with the Council in line with the requirements set out in the Council's Affordable Housing Policy Practice Note and which will enable persons in housing need to purchase such housing;

"Market Units" means Residential Units comprised in the Total Housing Units which are not Affordable Housing Units;

"Material Operation" means a material operation in accordance with section 27(4) of the 1997 Act provided that for the purposes of this Agreement the following shall be deemed not to be Material Operations: any archaeological works, works of excavation, demolition, site clearance, services diversions, site or soil investigations, landscaping works, ground modelling, noise attenuation works, the construction of any land fill gas works or the erection of hoardings and fences;

"Maximum Commuted Sum for Affordable Housing" means the sum calculated by application of the following formula:-

$$A = B \times C$$

where:-

A means the sum to be paid

B means the number of Affordable Housing Units which require to be provided in the Phase 2 development as agreed in terms of clause 13.2.1; and

C means the sum of TWENTY FIVE THOUSAND POUNDS (£25,000) STERLING;

"Mid rent housing" means housing with rents set at a level higher than social rented housing but lower than market rent levels to meet the requirements of persons in housing need, such rent levels to be agreed with the Council, acting reasonably having regard to other schemes in Edinburgh and the most recent Government guidance;

"New Street Car Park" means ALL and WHOLE the subjects lying on the east side of New Street, Edinburgh EH8 8BH registered under title number MID60240;

"Occupy/Occupation" means the use of land or buildings for the purposes permitted by the Planning Permissions but not including occupation by personnel engaged in construction, fitting out or decoration, or occupation for marketing or display or occupation in relation to security operations;

"Persons in housing need" means persons with identified housing needs that would not be met by the normal operation of the housing market in terms of criteria set by the Council from time to time for low cost home ownership housing, mid rent housing and social rented housing or such other type of affordable housing units that may be agreed by the Council to constitute affordable housing tenure;

"PA1 Section 75 Agreement" means the minute of agreement securing the provision of Affordable Housing Units on the PA1 Affordable Housing Subjects entered into between the

Council and the Second Proprietors in terms of section 75 of the 1997 Act registered under title number MID8730, the minute of agreement securing the provision of Affordable Housing Units on the PA1 Affordable Housing Subjects entered into between the Council and Castle Rock Edinvar Housing Association in terms of section 75 of the 1997 Act registered under title number MID8730 or such other minute of agreement in terms of section 75 of the 1997 Act securing the provision of Affordable Housing Units on the PA1 Affordable Housing Subjects in respect of the Caltongate Development;

"PA1 Affordable Housing Subjects" means the subjects forming part of the PA1 Site shown shaded green and marked "PA1 Block A", "PA1 Block B" and "PA1 Block C" on Plan 6 under exception of the areas forming the ground floor level in each Block;

"PA3 Applications" means (first) the application under reference 13/00088/FUL to vary condition 1 of Planning Permission 07/01287/FUL and any non-material variations thereto; and (second); the application under reference 13/00095/FUL to vary condition 2 (Archaeology), Condition 4 (Sustainability Management System), condition 6 (Construction Details), Condition 7 (Sustainability Management System) and condition 21 (Boundary Treatments) of Planning Permission 07/01287/FUL and any non-material variations thereto;

"PA4A Applications" means(first) the application under reference 13/00090/FUL to vary condition 1 of Planning Permission 07/04400/FUL and any non-material variations thereto; and (second); the application under reference 13/00096/FUL to vary condition 2 (Archaeology), Condition 4 (Sustainability Management System), condition 6 (Construction Details), Condition 7 (Sustainability Management System) and condition 21 (Boundary Treatments) of Planning Permission 07/04400/FUL and any non-material variations thereto;

"PA5 Application" means the application under reference 13/00091/FUL to vary condition 1 of Planning Permission 07/01237/FUL and any non-material variations thereto;

"PA6 Application" means the application under reference 13/00092/FUL to vary condition 1 of Planning Permission 07/01288/FUL and any non-material variations thereto;

"PA7 Application" means the application under reference 13/00093/FUL to vary condition 1 of Planning Permission 07/01241/FUL and any non-material variations thereto;

"Northern Range Application" means the application under reference 13/03406/FUL for the Northern Range Development;

"Southern Range Application" means the application under reference 13/03407/FUL for the Southern Range Development;

"PA1 Development" means the erection of buildings for residential (flats), use of ground floors as day centre (community facility), alternative retail (Class 1), financial, professional or other services (Class 2) and/or business (Class 4) purposes and landscaping works, alterations to steps and boundary wall of Calton Road Stairs on the PA1 Site permitted in terms of detailed planning permission reference 07/00560/FUL;

"PA2 Development" means the enabling works, including erection of podium structure, installation of ground source heating and cooling system and associated works permitted in terms of the detailed Planning permission reference 07/100101/FUL granted by the Council on 21 May 2008 or the permission to be granted under reference 13/00085/FUL;

"PA3 Development" means the erection of buildings for offices, retail (Class 1) and food and drink (Class 3) purposes, and alternative business (Class 4) and/or leisure (Class 11) use, retail (Class 1) and/or food and drink (Class 3) use and retail (Class 1), financial and professional services (Class 2) and/or business (Class 4) use, podium structure (including ground source heating and cooling system), car parking, access, open space and landscaping including public square, works to the south end of New Street, and associated works on the PA3 Site as described in the PA3 Applications ;

"PA4A Development" means the erection of buildings for residential and business (Class 4) and/or community facility, and retail (Class 1) and/or food and drink (Class 3) purposes, podium structure (including ground source heating and cooling system), car parking, access, open space and landscaping including public square and pend/arcade route off Canongate, works to south end of New Street, and associated works on the PA4A Site as described in the PA4A Applications;

"PA5 Development" means the redevelopment and erection of buildings (including bridge link over New Street) with part retained facades for use as a hotel and conference centre, retail (Class 1), car parking, access, servicing area, open space and landscaping including public square, work to south end of New Street, and associated works on the PA5 Site, all as described in the PA5 Application;

"PA6 Development" means the redevelopment and erection of buildings for residential flats, offices, alternative office and/or community facility, and retail (Class 1) use, access and servicing area, realignment and alterations of Cranston Street on the PA6 Site, all as described in the PA6 Application;

"PA7 Development" means the redevelopment, alterations and change of use of arches (19-24) and erection of buildings for use as offices, retail (Class 1), restaurant/ bar and leisure (Class 11), access, open space, landscaping and associated works; external alterations and change of use of arches (1-18) for food and drink purposes (Class 3) and alternative use for retail (Class 1) and/or business (Class 4) purposes; realignment and alterations to Cranston Street; external alterations to 5A - 9 Cranston Street and change of use to residential and offices, and alternative use of ground floor (9 Cranston Street) for retail (Class 1), financial and professional services (Class 2) and/or business (Class 4) purposes on the PA7 Site, all as described in the PA7 Application;

"Northern Range Development" means the redevelopment and erection of buildings for mixed use development including offices (Class 4), class 1, 2, 3 commercial, non-residential institutions (class 10), leisure (class 11), and other associated uses, landscaping/public realm and other associated works on the Northern Range Site, all as described in the Northern Range Application;

"Southern Range Development" means the redevelopment and demolition and erection of buildings for mixed use development comprising class 7 hotels, class 1, 2, 3 commercial, class 4 business, community uses (class 8 & 10), leisure (class 11), and other associated uses, landscaping/public realm and other associated works on the Southern Range Site, all as described in the Southern Range Application;

"PA3 Planning Permissions" means the Planning Permission granted pursuant to the PA3 Application;

"PA4A Planning Permissions" means the Planning Permission granted pursuant to the PA4A Application;

"PA5 Planning Permission" means the Planning Permission granted pursuant to the PAS Application;

"PA6 Planning Permission" means the Planning Permission granted pursuant to the PA6 Application;

"PA7 Planning Permission" means the Planning Permission granted pursuant to the PA7 Application;



"Northern Range Planning Permission" means the Planning Permission to be granted pursuant to the Northern Range Application;

"Southern Range Planning Permission" means the Planning Permission to be granted pursuant to the Southern Range Site Application;

"PA1 Site" means that area or piece of ground at 20 Calton Road, Edinburgh, and that area or piece of ground opposite on the north side of Calton Road known as 51-55 Calton Road, including Calton Hill Stairs, Edinburgh, as shown delineated within broken purple lines on Plan 2;

"PA3 Site" means that area or piece of ground adjacent to New Street, Edinburgh, and the properties known as 221-223 Canongate, as shown delineated within broken orange lines on Plan 2;

"PA4A Site" means that area or piece of ground adjacent to New Street, Edinburgh, and the properties known as 221-223 Canongate, as shown delineated within broken green lines on Plan 2;

"PA5 Site" means that area or piece of ground adjacent to New Street, Edinburgh, and the properties known as 5 New Street (Canongate Venture), 223, 227, 229, 231 and 231A Canongate (including the Old Sailor's Ark), as shown delineated within broken light blue lines on Plan 2;

"PA6 Site" means that area or piece of ground at East Market Street/Cranston Street, Edinburgh, as shown delineated within broken red lines on Plan 2;

"PA7 Site" means that area or piece of ground at East Market Street, 5A, 7 and 9 Cranston Street and 1-24 Jeffrey Street, Edinburgh, as shown delineated within broken dark blue lines on Plan 2;

"Northern Range Site" means that area or piece of ground east of New Street and South of Calton Road, Edinburgh shown delineated in red on Plan 10;

"Southern Range Site" means that area or piece of ground adjacent to New Street, 5 New Street (Canongate Venture), 221 - 223 - 227 - 229 - 231A Canongate (including the Old Sailor's Ark), Land at East Market Street/Cranston Street/Jeffrey Street, Jeffrey Street Arches (1-24), Edinburgh shown delineated in red on Plan 11;

"Pedestrian Crossing Works" means (First) the installation of a toucan crossing at the indicative location in the Canongate shown marked "A" on Plan 4 and Plan 4A and; (Second) either (One) in the event that the PA 6 Development or PA7 Development are implemented, the installation of a pedestrian crossing at the indicative location in East Market Street shown marked "B" on Plan 4; or (Two) in the event that the Southern Range Development is implemented, the installation of a pedestrian crossing at the indicative location in East Market Street shown marked "B" on Plan 4A;

"Phase 2 Development" means the Caltongate Development other than the PA1 Development;

"Phase 2 Affordable Housing Subjects" means those parts of the Phase 2 Development which are identified for the provision of Affordable Housing Units in terms of the details required by Clause 13.2;

"Plan 1" means the Plan marked Plan 1 annexed and executed as relative hereto;

"Plan 2" means the Plan marked Plan 2 annexed and executed as relative hereto;

"Plan 3" means the Plan marked Plan 3 annexed and executed as relative hereto;

"Plan 3A" means the Plan marked Plan 3A annexed and executed as relative hereto;

"Plan 4" means the Plan marked Plan 4 annexed and executed as relative hereto;

"Plan 4A" means the Plan marked Plan 4A annexed and executed as relative hereto;

"Plan 5" means the Plan marked Plan 5 annexed and executed as relative hereto;

"Plan 5A" means the Plan marked Plan 5A annexed and executed as relative hereto;

"Plan 6" means the Plan marked Plan 6 annexed and executed as relative hereto;

"Plan 7" means the Plan marked Plan 7 annexed and executed as relative hereto;

"Plan 8" means the Plan marked Plan 8 annexed and executed as relative hereto;

"Plan 8A" means the Plan marked Plan 8A annexed and executed as relative hereto;

"Plan 9A "means the Plan marked Plan 9A annexed and executed as relative hereto;

"Plan 9B" means the Plan marked Plan 9B annexed and executed as relative hereto;

"Plan 10" means the Plan marked Plan 10 annexed and executed as relative hereto;

"Plan 11" means the Plan marked Plan 11 annexed and executed as relative hereto;

"Plan 12" means the Plan marked Plan 12 annexed and executed as relative hereto;

"Planning Permission(s)" means the PA3 Planning Permissions, the PA4A Planning Permissions, the PA5 Planning Permission, the PA6 Planning Permission, the PA7 Planning Permission, the Northern Range Planning Permission and the Southern Range Planning Permission or any of them;

"Practical Completion Certificate" means a certificate issued by the Proprietors' project manager or contract administrator in respect of any part of the Phase 2 Development certifying that construction of that part or phase of the Phase 2 Development is complete for practical purposes and may be handed over for occupation for its intended purpose;



"Proprietors" means the First Proprietors and the Second Proprietors and their respective successors and assignees;

"Public Realm Works" means the treatments to the streetscape within the Site using the materials specified in each of the locations shown on Plan 5 and Plan 5A;

"Registered Social Landlord" means a landlord registered under Section 57 of the Housing (Scotland) Act 2001;

"Relevant Date of Entry (Car Club)" means the earlier of (one) the Relevant Date of Entry (PA4A) or (two) the date on which the first unit sold or let as part of the Northern Range Development or (three) the date on which the first unit is sold or let as part of the PA3 Development in each case as evidenced by a concluded contract of sale or lease between the Proprietors and a third party purchaser or tenant;

"Relevant Date of Entry (PA4A)" means the date on which the first Residential Unit to be sold or let as part of the PA 4A Development is sold or let as evidenced by a concluded contract of sale or lease between the Proprietors and a third party purchaser or tenant;

"Relevant Date of Entry (PA6)" means the date on which the first Residential Unit to be sold or let as part of the PA 6 Development is sold or let as evidenced by a concluded contract of sale or lease between the Proprietors and a third party purchaser or tenant;

"Relevant Date of Entry (Tram)" means the date on which the first Residential Unit or commercial premises within the Phase 2 Development is sold or let as evidenced by a concluded contract of sale or lease between the Proprietors and a third party purchaser or tenant;

"Relevant Date of Entry (Junction)" means the earlier of (1) the Relevant Date of Entry (PA4A); (2) the Date of Practical Completion of the PAS Development; or (3) the Date of Practical Completion of Hotel One;

"PA4A Relevant Date of Entry Notice" means a written notice served by the Proprietors on the Council confirming (a) the amount (after Indexation) of the Education Contribution; and (b) the Relevant Date of Entry for the first Residential Unit to be sold or let as part of the PA4A Development;

"PA6 Relevant Date of Entry Notice" means a written notice served by the Proprietors on the Council confirming (a) the amount (after Indexation) of the Education Contribution; and (b) the Relevant Date of Entry for the first Residential Unit to be sold or let as part of the PA6 Development;

"Relevant Date of Entry Notice (Tram)" means a written notice served by the Proprietors on the Council confirming the Relevant Date of Entry for the first Residential Unit or commercial premises to be sold or let as part of the Phase 2 Development;

"Residential Unit" means any property within the Caltongate Site constructed and designed for residential use of any sort and which term may apply individually or to a group of such units whether divided from one another either vertically or horizontally and which term also includes the Affordable Housing Units;

"Schedule" means the Schedule in eight parts;

"Shared equity housing" means the individual owner of a residential unit whilst bearing to own a 100% share of a residential unit owns a part agreed share with the remaining share secured to a Registered Social Landlord or Scottish Ministers or such other landlord or body as may be approved by the Council;

"Shared ownership housing" means the individual owner purchases part of the residential unit, with the remaining share of the residential unit remaining in the ownership by a Registered Social Landlord. The individual owner pays rent for the share of the residential unit retained by the Registered Social Landlord. The Registered Social Landlord benefits from any equity gain when the house is sold;

"Social rented housing" means property provided at an affordable rent owned, managed, leased or otherwise provided by a Registered Social Landlord (or such other body as maybe approved by the Council) to meet the requirements of persons in housing need;

"Site" means the area of land shown delineated in red on Plan 1;

"Total Housing Units" means the total number of residential units which are permitted to be constructed on the Agreement Subjects in terms of the Phase 2 Development;

"Tram Contribution" means the sum of FIFTY THOUSAND POUNDS (£50,000) for the purpose of the Edinburgh Tram.

## 2. CONSTRUCTION OF DEED

2.1 If any provision of this Agreement is held to be invalid or illegal or unenforceable the validity, legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired.

2.2 If this Agreement or any provision of this Agreement is held to be unenforceable against any one Proprietor, it shall not in any way affect the enforceability of this Agreement or the said provision, as the case may be, against any other Proprietor.

2.3 References to statutes, regulations, orders or delegated legislation shall include any such instrument re-enacting or made pursuant to the same power.

2.4 References to the singular include the plural and references to any genders.

## 3. CONDITIONALITY

3.1 The obligations in parts 2 to 8 of the Schedule shall not have effect unless the relative Planning Permission has been initiated by the carrying out of a Material Operation, and for the avoidance of doubt all other clauses of this Agreement shall take effect from the date of the final execution of this Agreement.

## 4. OBLIGATIONS OF PARTIES

4.1 The Proprietors and the Council shall be bound to discharge the obligations incumbent on them in terms of this Agreement, including the provisions specified in parts 2 to 8 of the Schedule.

4.2 The Proprietors shall be bound to provide a copy of every Practical Completion Certificate issued in respect of the Development within 14 days of the Date of Practical

Completion to enable the Council to monitor the compliance with the terms of this Agreement.

4.3 The Proprietors shall be bound to serve the following notices upon the Council:-

4.3.1 the PA4A Relevant Date of Entry Notice;

4.3.2 the PA6 Relevant Date of Entry Notice;

4.3.3 the Relevant Date of Entry Notice (Tram).

## 5. CAR CLUB

5.1 The Proprietors shall pay to the Council the Car Club Contribution within ten working days of the Relevant Date of Entry (Car Club) which shall be applied by the Council towards the Edinburgh Car Club to fund the provision of Car Club vehicles to be located within the vicinity of the Caltongate Development and the promotion of any Traffic Regulation Order required to designate parking bays for the said Car Club vehicles.

5.2 The Proprietors shall be obliged to provide six car parking spaces for use by the Edinburgh Car Club as follows:-

5.2.1 In the event that the PA3 Development is implemented, three of which shall be provided at the on-street location shown shaded blue and marked "1,2,3" on Plan 3 and three of which shall be provided underground in the podium beneath the PA3 Development in the location shown hatched in blue and marked "4,5,6" on Plan 3A;

5.2.2 In the event that the Northern Range Development is implemented, three of which shall be provided at the on-street location shown shaded red and marked "1,2,3" on Plan 3 and three of which shall be provided underground in the podium beneath the PA4A Development in the location shown hatched in red and marked "4,5,6" on Plan 3;

5.2.3 At least one car parking space shall be provided prior to the date of first Occupation of any residential unit within the PA4A Development, the remaining spaces to be provided within one year of the date of first Occupation of any residential unit within the PA4A Development. Prior to the provision of the six car parking spaces the Proprietors shall submit a request to the Council to make a traffic regulation order to regulate the use of the car parking spaces for the Edinburgh Car Club and if the car parking spaces are to be provided in phases a request for such an order prior to completion of each phase.

## 6. PEDESTRIAN CROSSINGS AND PUBLIC TRANSPORT INFORMATION

6.1 The Council will provide the Proprietors with specifications and confirmed locations for Pedestrian Crossing Works within six calendar months of the final date of signing of this Agreement.

6.2 The Proprietors shall be bound to procure an appropriate design for the Pedestrian Crossing Works in compliance with the specifications provided by the Council and shall submit the design to the Council for approval.

6.3 The Council shall be bound to use reasonable endeavours to approve the design of the Pedestrian Crossing Works within three months of the date of receipt.

6.4 Provided that the Council have approved the design of the Pedestrian Crossing Works in accordance with the timescale in clause 6.3, the Proprietors will be bound to carry out the Pedestrian Crossing Works in accordance with the approved design and to the following timescales:

6.4.1 the Pedestrian Crossing Works in the Canongate shall be completed prior to the Date of Practical Completion of (First) the PA5 Development; (Second) Hotel One; or (Third) the PA4A Development, whichever occurs first;

6.4.2 the Pedestrian Crossing Works in East Market Street shall be completed prior to the Date of Practical Completion of the PA6 Development or the PA7 Development or Hotel Two, whichever occurs first.

6.5 On or before the Date of Practical Completion of (a) the office building forming part of the PA3 Development or Northern Range Development; or (b) the public square to be completed as part of the PA3 Development, PA4A Development, PA5 Development or Southern Range Development, whichever date is the earlier, the Proprietors shall be bound to:

6.5.1 make real time bus information available to the occupiers of the offices forming part of the PA3 Development (or Northern Range Development as the case may be);

6.5.2 provide a real time bus information display within the public square; and

6.5.3 make real time bus information available to the occupiers of the offices forming part of the PA6 Development.

## 7. ST MARY'S STREET AND NEW STREET IMPROVEMENT WORKS

7.1 The Proprietors shall pay Junction Works Capped Sum within ten working days of the Relevant Date of Entry (Junction), which sum shall be applied by the Council towards the Junction Works.

7.2 The Council shall place the contribution paid by the Proprietors in terms of clause 7.1 into an interest bearing deposit account in the name of the Council and the Council will identify the Junction Works Capped Sum separately from any other sums it may hold in such account. Any interest accrued on the Junction Works Capped Sum shall be credited to such account and be applied in accordance with this paragraph as if forming part of the Junction Works Capped Sum.

7.3 The Council shall within 10 working days of written demand (at intervals of not less than one year) provide a certificate to the Proprietors setting out the details of the Junction Works Capped Sum expended by the Council at the date of the certificate and details of the works to which such expenditure relates and a statement of the capital and interest remaining after such expenditure.

7.4 The Council shall carry out the Junction Works in accordance with the specification at such time as the Council determine appropriate, having regard to the rate of completion of the Caltongate Development and considerations of road safety.

7.5 At the expiration of five years from the date of payment of the contribution paid in terms of clause 7.1 or in the event that the Planning Permissions are revoked or otherwise fall, the Council shall forthwith repay to the Proprietors the amount (if any) of the contribution which at that date has not been expended by the Council in accordance with clause 7.4 together with interest on the said amount which has not been expended for the period from payment of the contribution until the date of repayment.

7.6 The Proprietors shall not effect the physical closure of New Street to vehicular traffic following conclusion of the statutory procedures required to stop up New Street until road construction consent in respect of the construction of that section of road forming part of New Street between East Market Street and Canongate shown delineated in red on Plan 7 and all other consents required to bring the new section of road into use (including those required for the redesign of, and works to, the East Market Street / New Street junction) have been granted. The Proprietors shall be bound to complete the construction of the said section of road in accordance with the conditions of any road construction consent granted by the Council.

7.7 Prior to commencement of the Southern Range Development, the Proprietors shall submit a written request to the Council for:-

7.7.1 the promotion of a road traffic regulation order to make New Street from its junction with East market Street to its junction with Canongate one way in a southerly or south easterly direction. The Proprietors shall meet all reasonable costs associated with the traffic regulation order from application stage to confirmation of the order; and

7.7.2 the promotion of a redetermination order application to a section of New Street from its junction with east Market Street to Canongate to change the conventional road layout (carriageway with footway either side) to a shared surface over the full length. The Proprietors shall meet all reasonable costs associated with the redetermination order from application stage to confirmation of the order.

## 8. COMMUNITY FACILITY

8.1 The Proprietors shall be bound to provide a Community Facility, all in terms of details to be submitted for the approval of the Council prior to the Commencement Date of the PA7 Development or Arches Development. The Proprietors shall, prior to the submission of details for the approval of the Council under this clause undertake consultation with the community on the proposed Community Facility. The details submitted for the approval of the Council shall include:

8.1.1 the location of the Community Facility;

8.1.2 the internal specification of the Community Facility;

8.1.3 the proposed community uses within the Community Facility;

8.1.4 the arrangements for how the Community Facility will be marketed to a Community Organisation or the Council or otherwise made available to the community (which may include, at the sole discretion of the Proprietors, the direct provision of the Community Facility by the Proprietors and, if considered appropriate by the Proprietors a unilateral obligation in terms of section 75 of the 1997 Act);

8.1.5 arrangements for the maintenance of the Community Facility which shall, in the event that the Community Facility is to be operated by the Council or Community organisation, include details of the timing of payments of the financial contribution payable by the Proprietors to the Council or Community Organisation (as applicable) towards its running costs (which shall be a minimum of FIFTY THOUSAND POUNDS (£50,000) STERLING);

8.1.6 a summary of the outcome of the consultation carried out on the proposed Community Facility; and

8.1.7 the build period and the target Date of Practical Completion for the Community Facility.

8.2 By the Date of Practical Completion of the PA7 Development or Arches Development, or by such other date as may be agreed by the Council and the Proprietors both acting reasonably, the Proprietors shall be bound to:-

8.2.1 undertake the marketing of the Community Facility to Community Organisations or to the Council in terms of the arrangements approved in terms of clause 8.1.4; and

8.2.2 use reasonable endeavours to conclude a Community Facility Contract; or

Provided that the obligations under this clause 8.2 shall not apply where the details approved in terms of clause 8.1.4 include the direct provision of the Community Facility by the Proprietors.

8.3 Unless the circumstances in clause 8.4 or 8.5 apply, the Proprietors shall be bound to complete and deliver the Community Facility to the specification agreed in terms of clause 8.1 and thereafter the Community Facility shall be operated in accordance with the approved details, which details may be varied in writing between the parties.

8.4 In the event that the Proprietors have complied with the terms of clause 8.2 and have used reasonable endeavours for a period of 12 months to conclude a Community Facility Contract, but have been unable to do so, then they shall advise the Council in writing. If, following receipt of said notice, the Council (being bound to act reasonably) confirms that it is satisfied that the Proprietors have used reasonable endeavours as aforesaid then the provisions of this Clause 8 shall cease and the Community Facility may be used for any other lawful purpose.

8.5 In the event of a material change of circumstances which affect the viability of the Community Facility, the Proprietors, having complied with their obligations in terms of this clause and at all times acting reasonably, either party to this Agreement may require a review of the obligation to provide a Community Facility in terms of this clause.



## 9. AFFORDABLE BUSINESS SPACE

9.1 Contracts shall be let to develop a minimum of 645 square metres of Affordable Business Space within the Site as follows:-.

9.1.1 In the event that the Canongate Venture is to be demolished then contracts for the Affordable Business Space shall be let before the demolition commences in terms of listed building consent granted by the Council under Reference Number 13/00101/LBC;

9.1.2 In the event that the Canongate Venture is to be otherwise redeveloped then:-

9.1.2.1 In the event that, at the commencement of such redevelopment, Class 4 business space will be available within the redeveloped Canongate Venture then contracts for the Affordable Business Space shall be let before the Practical Completion of the redevelopment of the Canongate Venture;

9.1.2.2 In the event that, at the commencement of such redevelopment, Class 4 business space will not be available within the redeveloped Canongate Venture then the Canongate Venture may be redeveloped without the provision of the Affordable Business Space and contracts shall be let for the Affordable Business Space prior to the Practical Completion of the Class 4 business space comprised in the Northern Range Development.

## 10. TRAVEL PLAN

10.1 Prior to the date of first Occupation of any part of the PA3 Development, the PA5 Development, PA6 Development, Northern Range Development or Southern Range Development or prior to the date of first Occupation of any of the retail units within the PA4A Development (whichever occurs first), the Proprietors shall submit a draft Travel Plan to the Council for approval which Travel Plan shall contain: -

10.1.1 details of measures to achieve the following objectives, namely (1) the reduction in the number of car journeys to and from the Phase 2 Development by employees of businesses within, and visitors to, the Phase 2 Development, and (ii) the increase in the number of journeys to and from the Development by employees of businesses within the Phase 2 Development by public transport, on foot or by bicycle ("Objectives"); and

10.1.2 provision for a traffic count to measure average traffic movement in the vicinity of the Phase 2 Development to be undertaken on or around the date occurring one year from the first date of opening for business of the hotel forming part of the PA5 Development.

10.2 The Council and the Proprietors shall agree the final terms of the Travel Plan within twelve months of the date of first Occupation of any part of the PA3 Development, the PA5 or PA6 Developments Northern Range Development or Southern Range Development or the date of first Occupation of the retail units within the PA4A Development, as the case may be. The Proprietors shall be bound thereafter to procure the implementation of the Travel Plan as approved by the Council to the reasonable satisfaction of the Council.

10.3 Within eighteen months of the date of agreement of the final Travel Plan by the Council and the Proprietors, and thereafter on the second, third, sixth and eleventh anniversaries of the date

of agreement of the said Travel Plan (and in intervening years where so required in terms of the Travel Plan) the Proprietors shall provide to the Council a survey (which may be in the form of responses to a questionnaire) of transportation modes of travel to and from the PA3, PA4A, PA5, PA6, Northern Range and Southern Range Developments of all employees employed by commercial occupiers within the PA3, PA4A, PA5, PA6, Northern Range and Southern Range Developments.

10.4 In the event that the Council considers that (1) the surveys referred to at clause 10.3 demonstrate that the Objectives are not being achieved or (2) at any time after the period of 10 years from the date of final agreement of the Travel Plan has expired the Objectives are not being achieved, the Proprietors shall enter into discussions with the Council to agree such additional steps as may reasonably be required by the Council, and shall use reasonable endeavours to procure the implementation of such additional steps, to achieve the Objectives of the Travel Plan.

## 11. RE-USE OF EXISTING STONE

11.1 On the demolition of the vehicle depot at East Market Street shown hatched in green on Plan 1 in accordance with the Conservation Area Consent granted by the Council under Reference Number I3/OOIO3/CON or Reference Number 13/03402/CON, the Proprietors shall make available to the Council such masonry material arising from the demolition of the building as the Council may require for the erection of a new wall on the north side of Calton Road.

11.2 The masonry material to be made available to the Proprietors will be subject to the outcome of a demolition audit to be completed by the Proprietors on the demolition of the building. For the avoidance of doubt, the Council will be responsible for the transportation of the masonry materials and the erection of the wall on Calton Road.

## 12. MANAGEMENT STRATEGY FOR USE OF PUBLIC SQUARE AND PUBLIC ART STRATEGY

12.1 The Proprietors shall establish a management company, ("CML"), which company shall, along with other duties, be responsible for the traffic management of the public square and those roads within the Phase 2 Development which are not adopted for maintenance by the Council, the extent of which areas are shown (subject to any amendments arising out of the necessary road construction consent process) as follows:-

12.1.1 In the event that the Northern Range Development and Southern Range Development are implemented, the area shown shaded red on Plan 8; or

12.1.2 In any other case, the area shown shaded pink on Plan 8A.

12.2 CML shall co-ordinate and manage all deliveries coming into this area, and shall also restrict deliveries to certain times within the day, of which the core hours will be 7.00am to 10.00 am. It is expected that deliveries will be pre-booked and CML will ensure that delivery times are staggered within the core hours.

12.3 CML will ensure compliance with the traffic and delivery rules by the use of retractable bollards that can be operated from the management suite, or by induction loop or number plate



recognition where necessary.

12.4 Taxis shall only be permitted to use the public square to drop off and/or pick up clients of the hotel forming part of the PA5 Development. Access and egress will be over a retractable bollard at the end of New Street. No taxis shall be allowed to wait in the public square but the Council shall use its best endeavours to ensure that there is a taxi rank within sight of the hotel entrance situated in East Market Street. The parties acknowledge that the proposed hotel operators agree with this management strategy and will have a concierge at the hotel entrance to facilitate this strategy.

12.5 A first review of the management strategy for the public square in relation to vehicular movements shall be undertaken jointly by the Council, the Proprietors and CML on or around the date occurring one year from the first date of opening for business of the hotel forming part of the PA5 Development or on or around the date occurring one year from the first date of opening for business of any of the hotels forming part of the Southern Range Development, with a second review of the management strategy to be undertaken jointly by the Council, the Proprietors and CML at such future date as may be specified by the Council.

12.6 The Proprietors shall be bound to prepare a public art strategy for the Phase 2 Development and submit it to the Council prior to the Date of Practical Completion of the public square.

### 13. AFFORDABLE HOUSING

13.1 Subject to the terms of this clause, the Proprietors shall ensure that sufficient Residential Units within the Phase 2 Development shall be Affordable Housing Units so that the Caltongate Affordable Housing Requirement is met.

13.2 The Proprietors shall agree the following details with the Council prior to the construction of any residential unit within the Phase 2 Development (declaring, for the avoidance of doubt that the Proprietors shall not be prohibited from constructing any part of the Phase 2 Development which is common to the residential units and other uses comprised in the Phase 2 development):

13.2.1 The number of Affordable Housing Units that need to be provided in the Phase 2 Development in order to discharge the Caltongate Affordable Housing Requirement. The parties agree that the Affordable Housing Units provided on the PA1 Site through the PA1 Section 75 (the transfer of the PA1 Affordable Housing Subjects or PA1 Site as the case may be to a registered social landlord or the Council in terms of the PA1 Section 75 being deemed to contribute a minimum of 36 Affordable Housing Units) or otherwise provided on the PA1 Site (such as though the grant of planning permission for further residential development on the PA1 Site) shall be deemed to contribute towards the Caltongate Affordable Housing Requirement and shall be taken into account in determining the number of Affordable Housing Units that need to be provided in the Phase 2 Development.

13.2.2 The type of affordable housing tenure for the Affordable Housing Units;

13.2.3 The location(s) of the Phase 2 Affordable Housing Subjects if not already agreed between the Council and the Proprietors;

13.2.4 The design standards to which the Affordable Housing Units are to be built, which standards shall be agreed with the Council;

13.2.5 The type of Affordable Housing Contracts by which the Affordable Housing Units are to be leased, sold or otherwise made available to persons in housing need whether by transfer of land or completed units to the Council, to a Registered Social Landlord or otherwise.

13.2.6 Subject to the consent of the Council, the amount of any Commuted Sum for Affordable Housing which the Proprietors may pay in lieu of the provision of Affordable Housing Units declaring that the Proprietors may, subject to the consent of the Council, meet the whole of their obligations towards affordable housing in respect of this Clause 13 by paying the Maximum Commuted Sum for Affordable Housing.

13.3 The details agreed in clause 13.2 shall be implemented by the Proprietors to the satisfaction of the Council but may be varied by agreement of the Proprietors and the Council both acting reasonably at all times.

13.4 The Proprietors shall use all reasonable endeavours to enter into Affordable Housing Contracts with the Council, or a third party agreed with the Council in terms of the details agreed in clause 13.2 prior to the Occupation of one hundred of the Market Units to be sold or let within the Phase 2 Development as evidenced by a concluded contract of sale or lease between the Proprietors and a third party purchaser or tenant. The Proprietors undertake to serve written notice on the Council within ten working days of the Occupation of the one hundredth Market Unit to be sold or let within the Phase 2 Development.

13.5 In the event that the Proprietors have been unable to enter into Affordable Housing Contracts in accordance with this clause 13 prior to the completion of construction of one hundred Market Units within the Phase 2 Development, the Proprietors shall give notice to that effect to the Council and shall with any such notice provide the Council with evidence demonstrating that they have used all reasonable endeavours to enter into Affordable Housing Contracts, If, following receipt of said notice, the Council (being bound to act reasonably) confirms that it is satisfied that the Proprietors have used all reasonable endeavours as aforesaid then the provisions of clause 13.4 shall cease to apply and in that event the Proprietors shall continue to use all reasonable endeavours enter into any other Affordable Housing Contracts in terms of the details agreed in accordance with clause 13.2, provided that no more than one hundred and twenty of the Market Units within the Phase 2 Development shall be Occupied until such time as the Proprietors have entered into any other Affordable Housing Contract.

13.6 If, following receipt of the said notice in accordance with clause 13.5, the Council (being bound to act reasonably) confirms that it is satisfied that the Proprietors have used all reasonable endeavours as aforesaid, then the Proprietors shall have the option to pay the Maximum Commuted Sum for Affordable Housing.

13.7 In the event that the details agreed in terms of Clause 13.2 include the payment of a Commuted Sum for Affordable Housing then the following provisions shall apply:

13.7.1 The Proprietors will pay the Commuted Sum for Affordable Housing before the Occupation of one hundred of the Market Units within the Phase 2 Development.

13.7.2 In the event of the Commuted Sum for Affordable Housing not being utilised in full by the Council within ten years of the date of payment to the Council then such contribution, or the unused part thereof, as appropriate shall be repaid to the person from whom it was paid.

13.8 In the event that the Proprietors elect to pay the Maximum Commuted Sum for Affordable Housing (either in terms of clause 13.2 or clause 13.6) then the following provisions shall apply:

13.8.1 On payment to the Council of the Maximum Commuted Sum for Affordable Housing the whole of the obligations of the Proprietors in relation to Affordable Housing in terms of this clause 13 shall be discharged.

13.8.2 In the event of the Commuted Sum for Affordable Housing not being utilised in full by the Council within ten years of the date of payment to the Council then such contribution, or the unused part thereof, as appropriate shall be repaid to the person from whom it was paid.

#### 14. TRAM CONTRIBUTION

14.1 The Proprietors shall pay the Tram Contribution within ten working days of the Relevant Date of Entry (Tram) which contribution shall be applied towards the Edinburgh Tram.

14.2 The Council shall on receipt of the Tram Contribution pay the Tram Contribution into a separate account held by the Council, which Tram Contribution shall be invested so as to earn the best rate of interest that can reasonably be obtained by the Council.

14.3 In the event of the Tram Contribution not being utilised in whole or in part by the Council by 31 December 2020 then the Tram contribution or such part as remains unspent, together with any interest that has accrued thereon, shall be refunded to the Proprietors following receipt of a written request from the Proprietors for repayment.

#### 15. PLANNING PERMISSION

Nothing in this Agreement shall prohibit or limit the right to develop any part of the Agreement Subjects in accordance with a planning permission (other than the Planning Permissions) granted after the date of this Agreement.

#### 16. DISCHARGE AND MODIFICATION OF AGREEMENT

16.1 In the event that the Proprietors wish to modify and/or discharge the whole or any part of this Agreement, the terms of Section 75A of the 1997 Act shall apply. The Proprietors shall be responsible for the Council's reasonable legal expenses and outlays properly incurred in the negotiation, drafting, preparation, completion and registration of any discharge and/or modification hereto.

16.2 Further in the event of all of the Planning Permissions being revoked or in any way falling in their entirety the obligations on the Proprietors in clauses 5 to 15 and in the relevant part of the Schedule shall fall automatically and be deemed pro non scripto.

#### 17. ASSIGNATION

The Proprietors shall not transfer or assign their rights and obligations under this Agreement or dispose of their interests in the Agreement Subjects prior to the date of the Keeper's acknowledgment of recording/registration of this Agreement in the General Register of Sasines/Land Register of Scotland.

## 18. ARBITRATION

Any dispute of any kind which may arise between the parties hereto and their successors regarding this Agreement shall be referred on the application of any party to the decision of an Arbitrator seated in Scotland to be mutually agreed by the parties and failing agreement appointed by the Sheriff Principal of Lothian and Borders at Edinburgh on the application of any party and the decision of such Arbitrator, including any award of expenses, shall be final and binding on the parties subject to the provisions of the Arbitration (Scotland) Act 2010 and failing such award the cost of any such arbitration shall be borne equally by the parties.

## 19. ENFORCEABILITY OF OBLIGATIONS

19.1 This Agreement is made pursuant to section 75 of the 1997 Act and it is agreed by the Council and the First Proprietors that the obligations undertaken by the First Proprietors in this Agreement shall be enforceable at the instance of the Council as Planning and roads authority against persons deriving title to the Council Subjects or any part thereof, but for the avoidance of doubt shall not be binding on or enforceable against The City of Edinburgh Council, declaring that:

19.1.1 the obligations in the Schedule shall only be enforceable against persons deriving title to those parts of the Council Subjects identified in the relevant part of the Schedule;

19.1.2 the obligations in clause 13 shall only be enforceable against persons deriving title to the PA4A Site, the PA6 Site and the PA7 Site; and

19.1.3 the obligations in this Agreement shall not be enforceable against owner-occupiers or tenants of any residential unit constructed pursuant to the Planning Permissions or The City of Edinburgh Council.

19.2 This Agreement is made pursuant to section 75 of the 1997 Act and it is agreed by the Council and the Second Proprietors that the obligations undertaken by the Second Proprietors in this Agreement shall be enforceable at the instance of the Council as Planning and roads authority against the Second Proprietors and persons deriving title to the Artisan Subjects or any part thereof from the Second Proprietors, declaring that:

19.2.1 the obligations in the Schedule shall only be enforceable against the heritable proprietors of those parts of the Artisan Subjects identified in the relevant part of the Schedule;

19.2.2 the obligations in clause 13 shall only be enforceable against the heritable proprietors of the PA4A Site, PA6 Site and the PA7 Site; and

19.2.3 the obligations in this Agreement shall not be enforceable against owner-occupiers or tenants of any residential unit constructed pursuant to the Planning Permissions.

19.3 For the purposes of section 75C of the 1997 Act, no person shall be liable for the performance, or any breach of, any obligation after they have disposed of their interest in the Agreement Subjects or the relevant part thereof, save in relation to any breach subsisting prior to disposing of such interest.

19.4 Nothing in this Agreement shall require the Proprietors to carry out works or undertake any obligations whatsoever in, upon or under land for which it does not have the necessary rights and which is not in its ownership or control unless such land and such rights as appropriate are made available at nil cost at an appropriate time in order to allow the carrying out of such works or obligations.

## 20. NOTICES

20.1 All notices which require to be given in terms of this Agreement shall be in writing and shall be deemed to be sufficiently given if sent by recorded delivery post addressed:

20.1.1 in the case of the Proprietors, to the Proprietors at their Registered Office or Head Office and, for subsequent persons with an interest in the Agreement Subjects (if a body corporate) to its Registered Office or Head Office, and (if an individual) to his last known address in the United Kingdom and (if a partnership) to the partnership and any one or more of the partners thereof or at such address as the Proprietors may have notified in writing to the Council;

20.1.2 in the case of the Council, to the Council at its Principal Office or to such other address as the Council may have notified the Proprietors previously in writing;

and any such notice shall be deemed to have been served on the second business day after the date on which the same was posted (excluding weekends and public and statutory holidays).

20.2 In proving service, it shall be sufficient to prove that the envelope containing the notice was duly addressed to the Council or the Proprietors, as the case may be, in accordance with this clause and posted to the place to which it was so addressed.

## 21. REASONABLENESS

Where under this Agreement any notice, costing, specification, Plan, certification, agreement or action is required to be given or reached or taken by any party or any response is requested any such notice, costing, specification, Plan, certificate, agreement, action or response shall not be unreasonable or unreasonably withheld or delayed.

## SCHEDULE

### Part 1

#### 1. Canongate Flats

1.1 ALL and WHOLE the subjects known as 227/5 Canongate, Edinburgh, EH8 8BJ being the subjects registered under title number M1D65316.

1.2 ALL and WHOLE the subjects known as 227/7 Canongate, Edinburgh, EH8 8BJ being the subjects registered under Title Number MID63173.

1.3 ALL and WHOLE the subjects known as 227/12 Canongate, Edinburgh, EH8 SBJ being the subjects registered under Title Number MID96866.

1.4 ALL and WHOLE the subjects known as 221/3 Canongate, Edinburgh, EH8 8BJ being the subjects registered under Title Number MID46342.

1.5 ALL and WHOLE the subjects known as 221/5 Canongate, Edinburgh, EH8 8BJ being the subjects registered under Title Number MDD42053.

1.6 ALL and WHOLE the subjects known as 221/6 Canongate, Edinburgh, EH8 8BJ being the subjects registered under Title Number MID83645.

1.7 ALL and WHOLE the subjects known as 221/7 Canongate, Edinburgh, EH8 8BJ being the subjects registered under Title Number MID85633.

1.8 ALL and WHOLE the subjects known as 227/4 Canongate, Edinburgh, EH8 8BJ being the subjects registered under Title Number MLD20639.

1.9 ALL and WHOLE the subjects known as 227/10 Canongate, Edinburgh, EH8 8BJ being the subjects registered under Title Number MID76797.

## 2. The Council Subjects

ALL and WHOLE (FIRST) those subjects described in and shown outlined red on the Plan annexed and executed as relative to Notice of Title in favour of The City of Edinburgh Council recorded G.R.S. (Midlothian) 18 Aug 1997 relating to the subjects known as and forming the Canongate Venture, 45 New Street, Edinburgh in the County of Midlothian; (SECOND) those subjects described in and shown outlined red on the Plan annexed and executed as relative to Notice of Title in favour of The City of Edinburgh Council recorded G.R.S. (Midlothian) 21 Dec 2006 relating to an area of ground extending to 0.061 hectare or thereby situated on the west side of Cranston Street and the south side of East Market Street in the City and County aforesaid; (THIRD) that area extending to 0.035 hectare or thereby shown outlined red on Plan 9A being part of the solum of Cranston Street in the City and County aforesaid which said area comprises part and portion of those subjects described in and shown outlined red on the Plan annexed and executed as relative to Notice of Title in favour of The City of Edinburgh Council recorded G.R.S. (Midlothian) 21 Dec 2006 relating to an area of ground extending to 0.084 hectare or thereby comprising the solum of Cranston Street in the City and County aforesaid; (FOURTH) those subjects described in and shown outlined red on the Plan annexed and executed as relative to Notice of Title in favour of The City of Edinburgh Council recorded G.R.S. (Midlothian) 21 Dec 2006 relating to an area of ground extending to 0.203 hectare or thereby on the south side of East Market Street at the junction of East Market Street and Cranston Street in the City and County aforesaid together with the building and others thereon comprising a former garage; and (FIFTH) that area extending to 0.134 hectare or thereby shown outlined red on Plan 9B together with the arched premises fronting East Market Street in the City and County aforesaid (but save to the extent aftermentioned, excluding the solum of Jeffrey Street including the pavements thereof and the airspace above same) with a right of common property along with



The City of Edinburgh Council (as heritable proprietor of the solum of Jeffrey Street, including the pavements thereof and the airspace above) to the solum of said arched premises which area comprises part and portion of those subjects described in and shown outlined red on the Plan annexed and executed as relative to Notice of Title in favour of The City of Edinburgh Council and recorded G.R.S. (Midlothian) 21 Dec 2006 relating to an area of ground extending to 0.319 hectare or thereby situated on the south of East Market Street, Edinburgh in the City and County aforesaid with the arched premises fronting said East Market Street with and including the solum of Jeffrey Street (including the pavements thereof) situated above the said arched premises (the structure of the arches supporting said Jeffrey Street) and the air space above Jeffrey Street.

## Part 2

The obligations in this part of the Schedule shall apply to the PA3 Development and shall be binding on and enforceable against the heritable proprietors of the PA3 Site (but only in the event that the PA3 Development is implemented)

### 1. Public Realm

Prior to the Date of Practical Completion of the PA3 Development, the Public Realm Works associated with the PA3 Development as shown within the boundaries of the PA3 Site on Plan 5 shall be completed to the reasonable satisfaction of the Council's Director of Services for Communities.

## Part 3

The obligations in this part of the Schedule shall apply to the PA4A Development and shall be binding on and enforceable against the heritable proprietors of the PA4A Site.

### 1. Education Contribution

1.1 The Proprietors shall pay the Education Contribution (PA4A) within ten working days of the Relevant Date of Entry (PA4A).

1.2 The Council shall place the Education Contribution into an interest bearing deposit account in the name of the Council and the Council will identify the Education Contribution separately from such other sums it may hold in such account. Any interest accrued on the Education Contribution shall be credited to such account and be applied in accordance with this paragraph as if forming part of the Education Contribution.

1.3 The Council shall within 10 working days of written demand (at intervals of not less than one year) provide a certificate to the Proprietors setting out the details of the amount of the Education Contribution expended by the Council at the date of the certificate and details of the works to which such expenditure relates and a statement of the capital and interest remaining after such expenditure.

At the expiration of five years from the date of payment of the Education Contribution by the Proprietors the Council shall forthwith repay to the Proprietors the amount (if any) of the Education Contribution which at that date has not been expended by the Council in accordance with this paragraph together with interest on the said amount which has not been expended for

the period from payment of the Education Contribution until the expiration of the said five year period.

## 2. Public Realm

Prior to the Date of Practical Completion of the PA4A Development, the Public Realm Works associated with the PA4A Development as shown within the boundaries of the PA4A Site on Plan 5 shall be completed to the reasonable satisfaction of the Council's Director of Services for Communities.

## Part 4

The obligations in this part of the Schedule shall apply to the PA5 Development and shall be binding on and enforceable against the heritable proprietors of the PA5 Site (but only in the event that the PA5 Development is implemented).

### 1. Public Realm

Prior to the Date of Practical Completion of the PA5 Development, the Public Realm Works associated with the PA5 Development as shown within the boundaries of the PA5 Site on Plan 5 shall be completed to the reasonable satisfaction of the Council's Director of Services for Communities.

## Part 5

The obligations in this part of the Schedule shall apply to the PA6 Development and shall be binding on and enforceable against the heritable proprietors of the PA6 Site (but only in the event that the PA6 Development is implemented).

### 1. Education Contribution

1.1 The Proprietors shall pay the Education Contribution (PA6) within ten working days of the Relevant Date of Entry (PA 6).

1.2 The Council shall place the Education Contribution into an interest bearing deposit account in the name of the Council and the Council will identify the Education Contribution separately from any other sums it may hold in such account. Any interest accrued on the Education Contribution shall be credited to such account and be applied in accordance with this paragraph as if forming part of the Education Contribution.

1.3 The Council shall within 10 working days of written demand (at intervals of not less than one year) provide a certificate to the Proprietors setting out the details of the amount of the Education Contribution expended by the Council at the date of the certificate and details of the works to which such expenditure relates and a statement of the capital and interest remaining after such expenditure.

At the expiration of five years from the date of payment of the Education Contribution by the Proprietors the Council shall forthwith repay to the Proprietors the amount (if any) of the Education Contribution which at that date has not been expended by the Council in accordance



with this paragraph together with interest on the said amount which has not been expended for the period from payment of the Education Contribution until the expiration of the said five year period.

## 2. Public Realm

Prior to the Date of Practical Completion of the PA6 Development, the Public Realm Works associated with the PA6 Development as shown within the boundaries of the PA6 Site on Plan 5 shall be completed to the reasonable satisfaction of the Council's Director of Services for Communities.

## Part 6

The obligations in this part of the Schedule shall apply to the PA7 Development and shall be binding on and enforceable against the heritable proprietors of the PA7 Site (but only in the event that the PA7 Development is implemented).

### 1. Public Realm

Prior to the Date of Practical Completion of the PA7 Development, the Public Realm Works associated with the PA7 Development as shown within the boundaries of the PA7 Site on Plan 5 shall be completed to the reasonable satisfaction of the Council's Director of Services for Communities.

## Part 7: Northern Range Site

The obligations in this part of the Schedule shall apply to the Northern Site Development and shall be binding on and enforceable against the heritable proprietors of the Northern Range Site.

### 1. Public Realm

Prior to the Date of Practical Completion of the Northern Range Development, the Public Realm Works associated with the Northern Range Development as shown within the boundaries of the Northern Range Site on Plan 5A shall be completed to the reasonable satisfaction of the Council's Director of Services for Communities.

## Part 8: Southern Range Site

The obligations in this part of the Schedule shall apply to the Southern Site Development and shall be binding on and enforceable against the heritable proprietors of the Southern Range Site.

### 1. Public Realm

Prior to the Date of Practical Completion of the Southern Range Development, the Public Realm Works associated with the Southern Range Development as shown within the boundaries of the Southern Range Site on Plan 5A shall be completed to the reasonable satisfaction of the Council's Director of Services for Communities.

Note: copies of the Plans to the said Agreement are included in this title sheet as supplementary data nos 10 to 26 to the title sheet.

## **Burden 7**

Deed of Declaration of Conditions, registered 18 Feb. 2016, by New Waverley 10 Limited ("Granter"), Proprietor of the Estate as hereinafter defined, sets forth and declares burdens &c in the following terms:

### **WHEREAS**

The Granter is the registered proprietor of the Estate.

### **NOW THEREFORE IT IS DECLARED AS FOLLOWS:**

#### **1. INTERPRETATION**

In this Deed unless there shall be something in the subject or context inconsistent therewith:

1.1 Words importing the singular shall include the plural and vice versa and where there is more than one proprietor at any one time of Property NWCV, Property NW5, Property NW5 - R1, Property NW5 - R2, Property NW5 - R3, Property NW5 - R4, Property NW5 - R5, Property NW6, Property NW6 - R1, Property NW6-R2, Property NW7, Property NW7 - R1 and/or Property Phase 2 they shall together be included in the expression Property NWCV Proprietor, Property NW5 Proprietor, Property NW5 - R1 Proprietor, Property NW5 - R2 Proprietor, Property NW5 - R3 Proprietor, Property NW5 - R4 Proprietor, Property NW5 - R5 Proprietor, Property NW6 Proprietor, Property NW6 - R1 Proprietor, Property NW6 - R2 Proprietor, Property NW7 Proprietor and Property NW7 - R1 Proprietor, Property Phase 2 Proprietor and/or Unit Proprietor;

1.2 Words importing a person shall include firms, partnerships, companies, associations and corporations and vice versa;

1.3 Any reference to any Act of Parliament shall include any modification, extension or re-enactment thereof for the time being in force and shall include all instruments, orders, notices, regulations, permissions and directions for the time being made, issued or given thereunder or deriving validity therefrom;

1.4 Marginal headings shall be ignored; and

1.5 References to a condition (which expression shall include a sub-condition) unless the context otherwise requires are references to conditions and sub-conditions of this Deed.

#### **2. DEFINITIONS**

In this Deed the following expressions shall have the following meanings unless the context shall otherwise require or admit:

2.1 "2003 Act" means the Title Conditions (Scotland) Act 2003;

2.2 "Deed" means this Deed of Conditions;

2.3 "Estate" means New Waverley, East Market Street, New Street and Canongate, Edinburgh, being the subjects registered in the Land Register of Scotland under Title Number M1D60240, MID60246, MID46342, MID42053, MID83645,

M1D85633, M1D20639, MID65316, M1D63173, MID76797, MID96866, MID156738, MID157572, MID157575, MID156797 and MID156739;

2.4 "Events" means public and private events (notwithstanding the foregoing generality for publicity and promotion purposes and for the display and offer of goods for sale) and the erection and maintenance of stalls, kiosks, stands, stages, equipment and others in or on the Public Realm Common Parts for the purposes of such events declaring that the party or parties hosting or running such events shall first have obtained all necessary consents and/or licences for such events, all to the reasonable satisfaction of the Managing Agent and/or Unit Proprietors, as appropriate and further declaring that all such events shall be conducted in a safe and orderly manner, to cause the least practicable disturbance to the Unit Proprietors by the undertaking and operation of such events, that there is no obstruction to pedestrian access and egress at all times over all paved areas and footpaths which form part of the Public Realm Common Parts, and that all damage caused to the Public Realm and/or the Units by virtue of the undertaking and operation of such events shall be made good as soon as reasonably practicable all to the satisfaction of the Managing Agent and/or the Unit Proprietors, as appropriate;

2.5 "Expenditure" means as the context requires the expenditure properly and reasonably incurred or reasonably anticipated to be incurred in carrying out the Public Realm Common Parts Services but that always under deduction of any insurance monies received in the event of damage or destruction of the Public Realm Common Parts by the Insured Risks;

2.6 "Full Cost of Reinstatement" means (the costs including the cost of shoring up, demolition and site clearance, architects', surveyors' and other professional fees and value added tax where applicable, which would be likely to be incurred in reinstating the Public Realm Common Parts in accordance with the requirements of this Deed at the time when such reinstatement is likely to take place having regard to all relevant factors (including any increases in building costs expected or anticipated to take place at any time up to the date upon Public Realm Common Parts are to be fully rebuilt or reinstated);

2.7 "Insured Risks" means loss, damage or destruction whether total or partially caused by fire, subsidence, heave, landslip, lightning, thunderbolt, explosion, riot, civil commotion, strikes, labour and political disturbance and malicious damage and aircraft and aerial devices (other than hostile aircraft) and devices and articles accidentally dropped therefrom, impact by road vehicles, storm, tempest, flood, bursting or overflowing of water tanks, apparatus and pipes, impact, earthquake and accidental damage to underground water, oil and gas pipes or electricity wires and cables, terrorism and such other normal commercial risks as may from time to time be considered necessary or reasonable;

2.8 "Managing Agent" means such person or entity as shall be appointed as managing agent for the Public Realm pursuant to either conditions 8.5 or 10 hereof;

2.9 "Plan 1" means Plan 1 annexed and executed as relative hereto;

2.10 "Plan 2" means Plan 2 annexed and executed as relative hereto;

2.11 "Plan 3" means Plan 3 annexed and executed as relative hereto;

2.12 "Plant and Equipment" means all gas, electrical and mechanical and other apparatus, plant, machinery, equipment and fixtures and fittings of ornament or utility within the Public Realm including any electricity sub-station, plant rooms, boilers, generators, heating, cooling, air conditioning and ventilation, lighting and emergency lighting systems, sprinklers, smoke and heat detectors, fire and smoke precaution equipment, fire and intruder alarm systems, signs, wireless internet and communications equipment and any other systems and equipment (including specifically standby and emergency systems and equipment and security equipment) within the Public Realm except in so far in each case as the same exclusively serve any Unit or Units which are owned or occupied on an exclusive basis and accordingly comprised within any such Unit or Units;

2.13 "Prescribed Rate" means the rate of interest which is from time to time 4% above the base lending rate for the time being of The Royal Bank of Scotland plc or such other rate equivalent thereto which may from time to time be substituted therefor by the Unit Proprietors;

2.14 "Property NWCV" means the subjects forming the access stairway and lift core at lower ground floor level and the building at ground and first floor levels all as shown edged and numbered 1 in blue on an additional layer of the cadastral map, a copy of which is included in this title sheet as supplementary data-1 to the title sheet ("said supplementary data-1");

2.15 "Property NWCV Proprietor" means the registered proprietor of Property NWCV;

2.16 "Property NWCV Public Realm Common Parts Proportion" means 2.8%;

2.17 "Property NW5" means the subjects means the subjects on part ground, first, second, third, fourth and fifth floor levels shown edged mauve on said supplementary data-1 under exception of Property NW5 Pend, Property NW5 - R1, Property NW5 - R2, Property NW5 - R3, Property NW5 - R4 and Property NW5 - R5;

2.18 "Property NW5 Proprietor" means the registered proprietor of Property NW5;

2.19 "Property NW5 Public Realm Common Parts Proportion" means 14.7%;

2.20 "Property NW5 - Pend" means the pend at ground floor level shown tinted blue and lettered B in blue on said supplementary data-1;

2.21 "Property NW5 - R1" means the subjects at first floor level edged and numbered 1 in brown on said supplementary data-1;

2.22 "Property NW5 - R1 Proprietor" means the registered proprietor of Property NW5-R1;

2.23 "Property NW5 - R1 Public Realm Common Parts Proportion" means 0.2%;

2.24 "Property NW5 - R2" means the subjects at ground and first floor levels edged and numbered 2 in brown on said supplementary data-1;

- 2.25 "Property NW5 - R2 Proprietor" means the registered proprietor of Property NW5 -R2;
- 2.26 "Property NW5 - R2 Public Realm Common Parts Proportion" means 0.4%;
- 2.27 "Property NW5 - R3" means the subjects at ground and first floor levels edged and numbered 3 in brown on said supplementary data-1;
- 2.28 "Property NW5 - R3 Proprietor" means the registered proprietor of Property NW5 -R3;
- 2.29 "Property NW5 - R3 Public Realm Common Parts Proportion" means 0.6%;
- 2.30 "Property NW5 - R4" means the subjects at ground floor level hatched yellow on said supplementary data-1;
- 2.3 1 "Property NW5 - R4 Proprietor" means the registered proprietor of Property NW5 -R4;
- 2.32 "Property NW5 - R4 Public Realm Common Parts Proportion" means 0.3%;
- 2.33 "Property NW5 - R5" means the subjects at ground floor level hatched brown on said supplementary data-1;
- 2.34 "Property NW5 - R5 Proprietor" means the registered proprietor of Property NW5 -R5;
- 2.35 "Property NW5 - R5 Public Realm Common Parts Proportion" means 0.6%;
- 2.36 "Property NW6" means the subjects at ground, first, second, third, fourth and fifth floors edged and numbered 4 in brown on said supplementary data-1 under exception of Property NW6-R2;
- 2.37 "Property NW6 Proprietor" means the registered proprietor of Property NW6;
- 2.38 "Property NW6 Public Realm Common Parts Proportion" means 7.9%;
- 2.39 "Property NW6 - RI" means the subjects at ground and first floors edged and numbered 5 in brown on said supplementary data-1;
- 2.40 "Property NW6 - RI Proprietor" means the registered proprietor of Property NW6-RI;
- 2.41 "Property NW6 - RI Public Realm Common Parts Proportion" means 0.5%;
- 2.42 "Property NW6 - R2" means the subjects at ground floor hatched green on said supplementary data-1;
- 2.43 "Property NW6 - R2 Proprietor" means the registered proprietor of Property NW6 -R2;
- 2.44 "Property NW6 - R2 Public Realm Common Parts Proportion" means 0.5%;
- 2.45 "Property NW7" means the subjects at ground and first floor levels hatched blue on said supplementary data-1;

2.46 "Property NW7 Proprietor" means the registered proprietor of Property NW7;

2.47 "Property NW7 Public Realm Common Parts Proportion" means 2.8%;

2.48 "Property NW7 - RI" means the subjects at second floor level edged and numbered 6 in brown on said supplementary data-1;

2.49 "Property NW7 - RI Proprietor" means the registered proprietor of Property NW7 -RI;

2.50 "Property NW7 - RI Public Realm Common Parts Proportion" means 0.1%;

2.51 "Property Phase 2" means the subjects edged and numbered 2 in blue on said supplementary data-1;

2.52 "Property Phase 2 Proprietor" means the registered proprietor of Property Phase 2;

2.53 "Property Phase 2 Public Realm Common Parts Proportion" means 68.6%;

2.54 "Public Realm" means that area of ground at New Street and Canongate, Edinburgh being the subjects:

2.54.1 edged and numbered 7 in brown on said supplementary data-1;

2.54.2 edged and numbered 8 and 9 in brown on said supplementary data-1; and

2.54.3 Property NW5 - Pend,

forming PART and PORTION of the Estate;

2.55 "Public Realm Common Parts" means the common parts of the Public Realm comprising:

(a) all toilets, hard and soft landscaped areas, roads, pavements, footpaths, street lighting, directional and information signage, landscape features and street furniture within and on the Public Realm;

(b) the Plant and Equipment; and

(c) the Service Media;

2.56 "Public Realm Common Parts Proportion" means (i) in the case of Property NWCV, the Property NWCV Public Realm Common Parts Proportion, (ii) in the case of the Property NW5, the Property NW5 Public Realm Common Parts Proportion, (iii) in the case of Property NW5 - RI, the Property NW5 - R1 Public Realm Common Parts Proportion, (iv) in the case of Property NW5 - R2, the Property NW5 -R2 Public Realm Common Parts Proportion, (v) in the case of Property NW5 - R3, the Property NW5 - R3 Public Realm Common Parts Proportion, (vi) in the case of Property NW5 - R4, the Property NW5 - R4 Public Realm Common Parts Proportion, (vii) in the case of Property NW5 - R5, the Property NW5 - R5 Public Realm Common Parts Proportion, (viii) the case of Property NW6, the Property NW6 Public Realm Common Parts Proportion, (ix) in the case of Property NW6 - RI, the Property NW6 - RI Public Realm Common Parts



Proportion, (x) in the case of Property NW6 - R2, the Property NW6 - R2 Public Realm Common Parts Proportion; (xi) in the case of Property NW7, the Property NW7 Public Realm Common Parts Proportion, (xii) in the case of Property NW7 - RI, the Property NW7 - RI Public Realm Common Parts Proportion, and (xiii) in the case of Property Phase 2, the Property' Phase 2 Public Realm Common Parts Proportion; or such alternative fair and equitable proportions as may be determined by the Unit Proprietors at a meeting in terms of condition 8 or by any Managing Agent in the event that such basis of allocation becomes no longer fair and equitable or is not fair and equitable with regard to a particular category or categories of expenditure or component parts of the Public Realm Common Parts Service Charge because such category or categories or component parts relate to services specified in this Deed and parts of the Public Realm which more significantly or less significantly benefit other parts of the Public Realm;

2.57 "Public Realm Common Parts Service Charge" means the relevant Public Realm Common Parts Proportion of the Expenditure (or anticipated Expenditure) in relation to the Public Realm Common Parts Services;

2.58 "Public Realm Common Parts Services" means the following services, facilities and amenities to be provided in respect of the Public Realm Common Parts:

2.58.1 renewing and rebuilding whenever necessary and repairing and maintaining, redecorating and cleansing the Public Realm Common Parts to ensure that they are kept at all times in good and substantial repair and condition and to the extent applicable in good working order;

2.58.2 maintaining any landscaped areas well stocked with soft landscaping and in good order and in accordance with good horticultural practice and gritting of the paved areas and footpaths in or on the Public Realm Common Parts in anticipation of, or in, inclement weather;

2.58.3 keeping the Public Realm Common Parts clean and tidy and property lighted and free from obstruction, waste, detritus and pests;

2.58.4 providing electricity and water to the Public Realm Common Parts;

2.58.5 audit and inspection of the Public Realm Common Parts including, without prejudice to the foregoing generality, for fire safety, water safety and electrical safety tests;

2.58.6 providing wireless internet and communications to, in and on the Public Realm Common Parts;

2.58.7 providing security guarding and equipment and closed circuit television or other electronic monitoring in and on the Public Realm Common Parts;

2.58.8 depending upon the ambient temperature and time of year providing heating, lighting and ventilation to such parts of the Public Realm Common Parts as reasonably require the same;

2.58.9 renewing and replacing whenever necessary and repairing and maintaining a closed circuit television service for the Public Realm Common Parts or any part thereof;

2.58.10 maintaining a policy or policies of insurance for the Public Realm Common Parts (net of actual or notional commission) against damage or destruction by the Insured Risks in the Full



Cost of Reinstatement and against property owner's liability, third party liability and employer's liability risks and such other insurance or insurances as are considered necessary or desirable by the Unit Proprietors or the Managing Agent (as appropriate);

2.58.11 arranging for an insurance valuation of the Public Realm Common Parts in order to establish the Full Cost of Reinstatement thereof not more frequently than once in every three years or less frequently than once in every five years;

2.58.12 employing and paying such contractors, agents, professional advisers or servants and the incurring of such other proper and reasonable costs all as may be reasonable or necessary in and about the performance of the services referred to in this definition;

2.58.13 keeping an account of the Expenditure and providing the Unit Proprietors with a certified statement summarising the Expenditure (but so that any reasonable delay in the provision of or the non-provision of such statement shall not entitle the Unit Proprietors to withhold or delay payment of any sum payable under this Deed), such statement being sufficient evidence (in the absence of manifest or demonstrable error) of all expenditure therein;

2.58.14 executing all works as may be necessary for complying with any notice served by any local or other competent authority in connection with the Public Realm Common Parts or any part thereof;

2.58.15 performing, supplying and carrying out any other service or matter which in the opinion of the Unit Proprietors or the Managing Agent (as appropriate) acting reasonably and taking account into account the interests of the generality of the Unit Proprietors is proper and reasonable for the better and more efficient management and use of the Public Realm Common Parts and for the comfort and convenience of the generality of the Unit Proprietors; and

2.58.16 expending proper and reasonable sums in complying with the title deeds of the Public Realm Common Parts;

2.59 "Service Media" means all pipes, channels, sewers, drains, mains, manholes, ducts, vents, conduits, chutes, gutters, water courses, wires, tanks, traps, meters, cables, aerials, poles, shafts, inspection chambers, tiles, pumps, flues and other conducting media within the Public Realm and includes any fixings, louvres, cowls and plant and machinery and other ancillary apparatus associated therewith except insofar in each case as the same exclusively serve any Unit or Units which are owned or occupied on an exclusive basis and accordingly comprised within any such Unit or Units;

2.60 "Unit" means each of Property NWCV, Property NW5, Property NW5 - R1, Property NW5 - R2, Property NW5 - R3, Property NW5 - R4, Property NW5 - R5, Property NW6, Property NW6 - R1, Property NW6 - R2, Property NW7 Property, Property NW7 - R1 and Property Phase 2 and "Units" shall be construed accordingly;

2.61 "Unit Proprietor" means the registered proprietor of any Unit and "Unit Proprietors" shall be construed accordingly;

2.62 "VAT" means value added tax chargeable under the VAT legislation or any identical or substantially similar tax which may replace such VAT;

2.63 "VAT legislation" means the Value Added Tax Act 1994 and all other (if any) legislation, orders or regulations relating to the payment of VAT; and

2.64 "Year" means the service charge year commencing on a date to be selected by the Managing Agent for the purpose of calculating the Public Realm Common Parts Service Charge for the relevant year.

### 3. SERVITUDES IMPOSED ON THE PUBLIC REALM COMMON PARTS

Each Unit Proprietor (and for the purposes of this condition each Unit shall be the benefited property and the Public Realm Common Parts shall be the burdened property) shall be entitled to exercise the following servitude and other rights:

#### 3.1 Access

A servitude right of pedestrian access and egress at all times over all paved areas and footpaths which form part of the Public Realm Common Parts;

#### 3.2 Passage of Utilities

The right of free passage of ventilation, heating, water, soil and other services (subject to temporary interruption for repair, alteration or replacement or due to the occurrence of any of the Insured Risks) in and through the Service Media and Plant and Equipment and any other exclusive service media and plant and equipment within the Public Realm Common Parts and right to make connections to the Service Media and Plant and Equipment and to lay and install, in, under or upon the Public Realm Common Parts any necessary additional service media with access thereto when required for the purposes of inspection, maintenance, repair, renewal and other necessary purposes such rights to make connections, to lay and install and to access to be exercised in each case with prior arrangement with the Managing Agent who shall consult so far as possible with the Unit Proprietors affected by the exercise of such rights;

#### 3.3 Access for Maintenance etc

A servitude right of access and egress at all times for both pedestrians and vehicles (including construction vehicles) over all roads, pavements and footpaths which form part of the Public Realm Common Parts, for the purposes of inspection or repair or maintenance of the relevant Unit or for any necessary renewal, reinstatement, rebuilding or replacement of the relevant Unit or for the initial development or any redevelopment of the area occupied or to be occupied by the relevant Unit and for any other necessary purposes including the initial development of the Public Realm Common Parts, such rights to be exercised in each case upon prior appointment with the Managing Agent who shall consult so far as possible with the Unit Proprietors affected by such access (except in the case of emergency when no appointment shall be necessary) and the right to occupy and/or erect scaffolding on any part of the Public Realm Common Parts and to operate any crane or cranes over the airspace of the Public Realm Common Parts which may be necessary for the purposes of such inspection, repair, maintenance, renewal, reinstatement, rebuilding, replacement, development or redevelopment of the relevant Unit.

#### 3.4 Exercise of Servitude Rights

The servitude rights created in this condition 3 shall be exercised subject to the conditions that they will be exercised only where the purposes of such inspection, repair, maintenance, renewal, rebuilding, replacement, development or redevelopment or other necessary purpose cannot practicably be carried out without taking access and egress over or occupying or erecting scaffolding on parts of the Public Realm Common Parts or operating any crane or cranes over the airspace of the Public Realm Common Parts and in such a way that the party exercising such rights shall cause the minimum practicable inconvenience and disturbance reasonably possible to the Unit Proprietors affected by such access and occupation and the party exercising such rights shall be bound to make good as soon as reasonably practicable all and any physical damage caused by the exercise of such rights.

#### 4. SERVITUDES IMPOSED ON THE UNITS

The Granter (and for the purposes of this condition the Public Realm is the benefited property and each Unit shall be the burdened property) shall be entitled to exercise the following servitude and other rights:

##### 4.1 Cranes

The right to operate any crane or cranes over the airspace of any of the Units which may be necessary for the purposes of the initial development of any other Unit or the Public Realm Common Parts;

##### 4.2 Exercise of Servitude Rights

The servitude and other rights created in this condition 4 shall be exercised subject to the conditions that the party exercising such right shall obtain from the competent authorities all necessary or requisite permissions in connection with the operation of the crane or cranes, shall take all proper safety precautions in the operation of the crane or cranes and shall cause the minimum practicable inconvenience and disturbance reasonably possible to the Unit Proprietors affected by the operation of such crane or cranes and shall make good all damage caused thereby to a Unit as soon as reasonably practicable to the reasonable satisfaction of the proprietor of such Unit.

##### 4.3 Duration

The servitude and other rights created in this condition 4 shall be extinguished in respect of any part of the benefited property when that part ceases to be owned by the Granter.

#### 5. COMMUNITY BURDENS APPLYING TO THE UNITS

For the purposes of this condition 5 and conditions 6, 7, 8, 9 and 12 the community is the Units. The conditions contained in this condition 5 and conditions 6, 7, 8, 9 and 12 are imposed on the Units as community burdens:

##### 5.1 Not to obstruct

Without prejudice to the servitude and other rights referred to in this Deed the Public Realm Common Parts shall be kept clear and free from obstruction at all times and no Unit Proprietor

shall hinder or obstruct the free and uninterrupted use of the same save as authorised by the Managing Agent with declaration that the Managing Agent may authorise a Unit proprietor or Proprietors to situate an outdoor seating area or areas in or on the Public Realm and/or for the purposes of Events;

## 5.2 Deleterious substances

No deleterious, pungent, dangerous or obnoxious effluent or substance shall be discharged or otherwise permitted to pass into the drains, sewers, pipes or other services or conducting media forming part of the Service Media or the Plant and Equipment;

## 5.3 Refuse

No open storage of materials, rubbish or scrap shall be permitted outside the Units. No refuse shall be stored in the Public Realm Common Parts (other than in receptacles provided for that purpose in connection with the Services) and each Unit Proprietor shall ensure that all refuse is contained within any Unit belonging to them until removed. No incineration of refuse shall be permitted;

## 5.4 Maintenance of Unit

Each Unit Proprietor shall maintain the Unit belonging to it in good order and repair in all time coming and shall ensure that at all times there shall be no overloading of the floors, ceilings or of the structural parts of the Units and in the event of damage or destruction shall as soon as reasonably expedient repair, restore and re-erect the same in all respects or redevelop the area occupied by the relevant Unit;

## 5.5 Maintenance of Public Realm Common Parts

5.5.1 Each Unit shall be held by each Unit Proprietor in all time coming under the obligation of:

5.5.1.1 upholding and maintaining in good order and repair and from time to time when necessary renewing, restoring and rebuilding the Public Realm Common Parts;

5.5.1.2 specifically carrying out the Public Realm Common Parts Services including expending with all reasonable and practicable speed any insurance monies received in the event of damage or destruction of the Public Realm Common Parts by the Insured Risks;

5.5.2 In the event that any Unit Proprietor fails to comply with the obligations in this condition 5 or any of them the other relevant Unit Proprietors or the Managing Agent shall have the right to take such steps and carry out such works as may be necessary to remedy such failure to comply all at the cost of the Unit Proprietor.

## 6. INTEREST

All sums payable by any Unit Proprietors which are not punctually paid within fourteen days of written demand shall bear interest at the Prescribed Rate from the date of written demand until payment and all the relevant Unit Proprietors or the Managing Agent shall be entitled to sue for recovery of any such arrears and raise other proceedings in their own respective names.

## 7. MANAGEMENT

The responsibility for the general management and administration of the Public Realm Common Parts shall lie with the Unit Proprietors who shall be entitled to delegate the arrangements for the carrying out of the same and the carrying out of the obligations in terms of condition 5.5.1 to the Managing Agent, save insofar as is provided by condition 10.

## 8. MEETINGS

8.1 A meeting of all the Unit Proprietors may be convened upon receipt of a requisition signed by or on behalf of two or more of the Unit Proprietors at which meeting there will be established a Proprietors' Association (of which all the Unit Proprietors will automatically become members) and a Committee of such Proprietors Association and there shall be appointed a Chairman and a Secretary and such other members of the Committee as the meeting shall determine (by not less than a 51% majority of the votes of all the Unit Proprietors or their proxies present at such meeting).

8.2 A meeting of all the Unit Proprietors may also be convened by the Committee or any Managing Agent appointed pursuant to condition 8.5 each year at which time elections of new Committee members shall be held, with all previous Committee members being available for re-election. The Committee or any such Managing Agent shall also convene a special meeting of all the Unit Proprietors either on his own initiative or upon receipt of a requisition signed by or on behalf of two or more of the Unit Proprietors. All meetings shall be held at such reasonably convenient time and place as the Committee or such Managing Agent shall determine and notice of the time and place of any meeting shall be given in writing by the Committee or such Managing Agent to all the Unit Proprietors not less than fourteen days prior to the date of the meeting.

8.3 At any meeting:

8.3.1 any of the Unit Proprietors may be represented by any other person as mandatory appointed by written mandate to attend, vote and act on behalf of the Unit Proprietor granting the mandate;

8.3.2 if the voting entitlement of the Unit Proprietors present in person or represented by a mandatory in aggregate exceeds 50% of the votes entitled to be cast or if there are two or more of the Unit Proprietors attending or represented there shall be a valid quorum;

8.3.3 the Chairman of the meeting shall be appointed by those present and entitled to vote;

8.3.4 all matters shall be determined where necessary by not less than a 51% majority of votes cast by those present at such meeting and in the event of an equality of votes, the Chairman shall be entitled to an additional or casting vote;

8.3.5 the voting power exercisable at such meetings by the Unit Proprietors, shall be determined on the basis that each of the Unit Proprietors shall be entitled to as many votes as correspond to the relevant Unit Proprietor's Public Realm Common Parts Proportion in relation to matters concerning the Public Realm and/or the Public Realm Common Parts;

declaring that if a Unit is owned by more than one proprietor at any one time the voting power exercisable at any meeting by the relevant Unit Proprietor may be exercised by either (or any) of them but if they disagree as to how the voting power should be exercised then no votes are to be counted for that Unit.

8.4 The Unit Proprietors shall be entitled to decide and vote on matters in relation to the Public Realm Common Parts (and shall acting in accordance with the principles of good estate management and acting reasonably have the right to determine (a) what, if any, additional services shall be included in the Public Realm Common Parts Services with a view to preserving the amenity of the Public Realm, (b) the means of providing the Public Realm Common Parts Services, (c) authorisation of a Unit proprietor or Proprietors to situate an outdoor seating area or areas in or on the Public Realm, and (d) authorisation of Events in or on the Public Realm) and the appointment of the Managing Agent and notwithstanding the foregoing any reference to a quorum in relation to same shall require two or more of the Unit Proprietors;

8.5 Subject to the provisions of condition 10 it shall be competent at any such meeting by a majority of relevant votes to do or decide any of the following:

8.5.1 to appoint the Managing Agent and to approve the terms of such appointment (including remuneration thereof which, for the avoidance of any doubt, shall be included in Expenditure),

8.5.2 to instruct the Managing Agent to provide the Public Realm Common Parts Services or any of them,

8.5.3 to instruct the Managing Agent to carry out any other function assigned to him at the meeting in relation to the Public Realm Common Parts,

8.5.4 to instruct the carrying out and/or provision of the Public Realm Common Parts Services or any of them,

8.5.5 to delegate to the Managing Agent the whole rights and powers of any of them including the power to enforce any community burden, and

8.5.6 to terminate the appointment of the Managing Agent.

8.6 All of the decisions passed at a meeting of the Unit Proprietors shall be binding upon all the Unit Proprietors whether or not present in person or represented at such meeting and whether or not consentors thereto;

8.7 The Managing Agent appointed in terms of Clause 8.5 shall be entitled to exercise all or any of the servitude or other rights available to any Unit Proprietor in terms of this Deed in so far as necessary for the performance of the obligations of the Managing Agent in terms of this Deed.

## 9. PUBLIC REALM COMMON PARTS SERVICE CHARGE

### 9.1 Payment to Account

9.1.1 In relation to the Public Realm Common Parts, the Unit Proprietors shall pay to the Managing Agent within fourteen days of written demand a payment to account in respect of



reasonably anticipated or specifically incurred costs including the costs of insurance thereof based on the Public Realm Common Parts Proportion due by the Unit Proprietors and which will be applied towards Expenditure. The level of the payment shall be determined by the Managing Agent acting reasonably and in the interests of good estate management.

9.1.2 The Public Realm Common Parts Service Charge shall include and the Unit Proprietors shall pay the proper and reasonable remuneration of the Managing Agent which shall be payable in respect of services provided in relation to the Public Realm Common Parts by the Unit Proprietors in accordance with their Public Realm Common Parts Proportion.

9.1.3 Following the issue of the statement of Expenditure referred to in condition 9.2 by the Managing Agent, the Unit Proprietors shall pay to the Managing Agent within fourteen days of written demand their Public Realm Common Parts Service Charge of the previous Year's Expenditure or the remaining outstanding balance thereof with any unused balance being carried forward to account for anticipated costs in the following Year.

## 9.2 Calculation of Public Realm Common Parts Service Charge

As soon as practicable after the calculation of the cost of providing the Public Realm Common Parts Services shall have been completed in respect of any Year the Managing Agent, in accordance with his appointment, shall prepare a statement of Expenditure and shall certify the amount of the same for that Year (but so that any reasonable delay in or absence of such certification shall not entitle any of the Unit Proprietors to withhold or delay payment of the Public Realm Common Parts Service Charge) and the certificate of the Managing Agent for such Year (in the absence of manifest or demonstrable error) shall be conclusive evidence for the purposes of this Deed of all matters covered thereby including specifically that any act and/or class of expenditure is correctly so treated.

## 9.3 Alternative Recovery Procedure

If the Managing Agent determines that it is more appropriate to recover the Public Realm Common Parts Service Charge (or elements of the Public Realm Common Parts Service Charge) quarterly in advance then in each Year the Managing Agent shall prepare a statement containing the reasonably estimated Expenditure for the Year in question (such estimate having been calculated wherever possible having regard to the level of costs for the immediately preceding Year and the likely cost to be incurred for the Year in question) and shall provide all the Unit Proprietors with a copy of the same. The Public Realm Common Parts Service Charge based upon the Managing Agent's reasonable estimate of the Expenditure in respect of each Year shall be payable by equal quarterly instalments in advance on dates to be selected by the Managing Agent. The Managing Agent shall apportion the Public Realm Common Parts Service Charge if any of the Unit Proprietors acquires an interest in part of a Unit or Units during the course of the Year in question. All the Unit Proprietors shall be bound to pay within fourteen days of written demand to the Managing Agent the quarterly instalment of their Public Realm Common Parts Service Charge. As soon as the Managing Agent's certificate shall have been completed under condition 9.2 hereof any overpayment based on such estimate shall be credited to the relevant Unit Proprietor for the following Year and any under payment by any Unit Proprietor based on such estimate shall be paid by the relevant Unit Proprietor within fourteen days of written demand. If the relevant Unit Proprietor shall not have been given notice of the Managing Agent's estimate of the amount of the Public Realm Common Parts Service Charge for any Year



before the last quarter day in the previous Year, the relevant Unit Proprietor shall on that and any subsequent quarter day before such notice is given, pay an amount equal to the last quarterly payment in respect of the previous Year and the requisite adjustment by way of addition of under payment or deduction of over payment shall be made to the first quarterly payment after such notice has been given.

#### 9.4 Provision of Information

The Managing Agent shall at the reasonable request and expense of any Unit Proprietor provide a summary of the amounts comprising the expenditure on the Public Realm Common Parts Services and vouchers and other evidence of the same but so that any reasonable delay in providing or the non-provision of such summary shall not be grounds upon which any of the Unit Proprietors shall be entitled to withhold or delay payment of the Public Realm Common Parts Service Charge.

#### 9.5 Exceptional Expenditure

In the event that the Managing Agent finds it necessary during any Year to incur substantial or exceptional expenditure which was not taken into account in the calculation of the estimate of the cost of providing the Public Realm Common Parts Services and is proper expenditure under this Deed and his appointment for the Year in question, the Managing Agent shall be entitled to recover from each of the relevant Unit Proprietors on not less than fourteen days prior written notice an additional provisional sum of Public Realm Common Parts Service Charge and/or increase the provisional sums payable for the rest of the Year in a sum representing the relevant Public Realm Common Parts Proportion of such additional expenditure due by the relevant Unit Proprietors.

#### 9.6 Irrecoverable Debts

In respect of the Public Realm Common Parts Services, in the event that the Managing Agent is unable to recover any sum due by any of the Unit Proprietors (having exhausted all debt recovery procedures which the Managing Agent in the exercise of its reasonable discretion determines to be appropriate) the other relevant Unit Proprietors shall be liable to reimburse to the Managing Agent such irrecoverable sum in accordance with the portions which their respective Public Realm Common Parts Proportion bears to the total of the Public Realm Common Parts Proportion of the other Unit Proprietors (excluding the defaulting party) and that within fourteen days of receiving a written demand for payment thereof from the Managing Agent but such reimbursement shall be without prejudice to the rights of the Unit Proprietors to recover by direct action against any defaulting party the share or shares of such irrecoverable sum as shall have been paid by them.

### 10. MANAGER BURDEN

For as long as the Granter remains a Unit Proprietor of any Unit, the Public Realm is subject to the manager burden in this condition 10. This manager burden applies for so long as the Granter remains a Unit Proprietor of any Unit or for the period of five years from the date that this Deed is registered in the Land Register of Scotland, whichever is the shorter period. For so long as this manager burden applies:

10.1 the Public Realm Common Parts shall be managed exclusively by the Granter or by a Managing Agent appointed by the Granter and the community burdens created by conditions 7, 8 and 9 are amended to this extent and the Granter and/or the Managing Agent so appointed shall perform all duties and exercise all the powers of the Managing Agent as if they were appointed the Managing Agent in terms of condition 8.5;

10.2 the Granter and/or the Managing Agent shall be entitled to authorise a Unit proprietor or Proprietors to situate an outdoor seating area or areas in or on the Public Realm;

10.3 The Granter and/or the Managing Agent shall be entitled to authorise Events in or on the Public Realm;

10.4 the Granter's reasonable decision (or that of the Managing Agent so appointed) as to the wants of repair, renewal, rebuilding and replacement to be carried out to the Public Realm Common Parts or the authorisation of a Unit proprietor or Proprietors to situate an outdoor seating area or areas in or on the Public Realm or the authorisation of Events in or on the Public Realm shall be final and binding on all the Unit Proprietors and the community burdens in conditions 7, 8 and 9 are amended to this extent.

## 11. REAL BURDENS, COMMUNITY BURDENS AND SERVITUDES

11.1 It shall not be competent for any of the Unit Proprietors to vary or discharge any of the community burdens allocated in this Deed by seeking approval from the Unit Proprietors within a distance of four metres from any of the Unit Proprietor's relevant Unit. Section 35 of the 2003 Act is disapplied to this Deed;

11.2 No Unit Proprietor shall make application to the Lands Tribunal for Scotland for discharge of the real burdens or servitudes or community burdens contained herein under section 90(1)(a)(i) or section 91(1) of the 2003 Act prior to the date occurring five years after the date of registration of this Deed in the Land Register of Scotland.

## 12. DISPUTES

12.1 In the event of any dispute or difference concerning any matter or thing arising out of this Deed (other than with regard to the meaning or construction thereof) such dispute or difference may be referred to some independent and fit person as agreed upon by the relevant Unit Proprietors or, in the absence of such agreement, nominated by the Chairman for the time being of the Scottish branch of the Royal Institution of Chartered Surveyors or other senior officeholder of the Royal Institution of Chartered Surveyors on the application of any party. But, in the event of any such dispute or difference arising over the meaning or construction of this Deed, then the matter shall be referred to an experienced solicitor agreed upon by the relevant Unit Proprietors or, in the absence of such agreement, nominated by the President for the time being of the Law Society of Scotland or other senior officeholder of the Law Society of Scotland on the application of any party. Any fees that shall be payable to any person appointed as aforesaid shall be within the award of that person and failing any award shall be shared equally among the parties to the dispute in question. Any reference as aforesaid shall be deemed to be a submission to arbitration under the provisions of the Arbitration (Scotland) Act 2010 and a decision, finding or decree of the said Arbitrator shall be final and binding on all concerned declaring that reference to the court

in terms of Rules 41 and 69 of Schedule 1 to the Arbitration (Scotland) Act 2010 is expressly excluded.

12.2 The seat of the arbitration shall be in Scotland.

### 13. NOTICES

Each Unit Proprietor shall be obliged to notify the Managing Agent forthwith of any changes to the proprietor or proprietors of any of the Unit or Units of which they are a proprietor and any notices or demands hereunder shall be sufficiently served if sent by registered or recorded delivery letter post addressed to the Unit Proprietors last notified at their Registered Office or if they do not have a Registered Office in Great Britain to their last known address or addresses so notified and any notice shall on proof of posting be deemed to have been received two days after posting.

### 14. VAT

Any sum due pursuant to this Deed shall be paid together with any VAT due and payable thereon at the then prevailing rate in return for a valid VAT receipt.

### 15 SEVERABILITY

Notwithstanding that any provision of this Deed may prove to be illegal or unenforceable the remaining provisions of this Deed shall continue in full force and effect.

Note: the references on supplementary data-1 to the title sheet have been provided from Plans 1, 2 and 3.

## **Burden 8**

Agreement in terms of Section 75 of the Town and Country Planning (Scotland) Act 1972, registered 8 Dec. 2016 between (1) THE CITY OF EDINBURGH COUNCIL, the Local Authority for the said City in terms of the Local Government etc. (Scotland) Act 1994, (who and whose successors as the Planning Authority and Roads Authority respectively are hereinafter referred to as "the Council") and (2) NEW WAVERLEY 10 LIMITED, (who with their respective successors in ownership of the Agreement Subjects as hereinafter defined are hereinafter referred to as "the Proprietors"), in the following terms,

### CONSIDERING

(A) that the Council is the planning authority for the City of Edinburgh in terms of Section 1 of the Town and Country Planning (Scotland) Act 1997 (hereinafter referred to as "the 1997 Act");

(B) that the Council is the roads authority for the City of Edinburgh in terms of Section 151 of The Roads (Scotland) Act 1984 (as said Section 151 is amended by Section 180 and Paragraph 135(10) of Schedule 13 to the Local Government etc. (Scotland) Act 1994);

(C) that the Proprietors are entitled in terms of Section 75 of the 1997 Act, by agreement with the Council, in respect of land in the district of the Council as planning authority, to enter into an obligation restricting or regulating the development or use of the land, either permanently or during such period as may be prescribed by the agreement;

(D) that the Proprietors are heritable proprietors of the Agreement Subjects (as hereinafter defined);

(E) that the Council granted the PA 2 Permission, PA 3 Permission and PA 4 Permission (all as hereinafter defined);

(F) that prior to granting the PA 2 Permission, PA 3 Permission and PA 4 Permission, the Council and the Proprietors entered into the Existing Agreement;

(G) that the Proprietors have applied to the Council for planning permission under the 1997 Act to vary the conditions attached to the PA 2 Permission, PA 3 Permission and PA 4 Permission;

(H) and the Council has resolved to grant said variation permissions subject inter alia to an Agreement under Section 75 of the 1997 Act being concluded and requiring the relevant obligations in the Existing Agreement to be applied to the said variation permissions (such permissions hereinafter referred to as New PA 2 Permission, New PA3 Permission and New PA 4 Permission.).

NOW THEREFORE the Council and the Proprietors, have agreed and do hereby agree as follows: Definitions

"Agreement Subjects" means that plot or area of ground lying on the east side of New Street, Edinburgh shown edged and numbered 2 in blue and edged and numbered 7 in brown on supplementary data-1 to the title sheet, which plot or area of ground forms PART and PORTION of (IN THE FIRST PLACE) ALL and WHOLE the subjects lying on the east side of New Street, Edinburgh, EH8 8BH being the subjects registered under Title Number MID60240; (IN THE SECOND PLACE) the subjects known as and forming 221 - 229 Canongate, Edinburgh, EH8 8BJ being the subjects registered under Title Number MID156738; (IN THE THIRD PLACE) the subjects known as and forming 221/3 Canongate, Edinburgh, EH8 8BJ being the subjects registered in the Land Register of Scotland under Title Number MID46342; (IN THE FOURTH PLACE) the subjects known as and forming 221/5 Canongate, Edinburgh, EH8 8BJ being the subjects registered under Title Number MID42053; (IN THE FIFTH PLACE) the subjects known as and forming 221/6 Canongate, Edinburgh, EH8 8BJ being the subjects registered under Title Number MID83645; (IN THE SIXTH PLACE) the subjects known as and forming 221/7 Canongate, Edinburgh, EH8 8BJ being the subjects registered under Title Number MID85633 and (IN THE SEVENTH PLACE) the subjects known as and forming the shop premises 223 Canongate, Edinburgh, EH8 8BJ being the subjects registered under Title Number MID157572;

"Existing Agreement" means the agreement entered into between the Council and the Proprietors in terms of Section 75 of the 1997 Act dated 24 March 2014 and subsequently dated and registered against the Agreement Subjects, a copy of which is annexed as relative hereto;

□Insolvency Event□ means the occurrence in relation to any party bound by this Agreement of any of the following events: (a) the party becoming apparently insolvent; (b) the making of an

order that they be wound up or the passing of a resolution for voluntary winding up; (c) the appointment of an administrative receiver or receiver and manager in respect of any of their assets and undertakings; (d) the making of any bankruptcy order or order for sequestration; (e) the making of any voluntary arrangement (corporate or individual) for a composition of debts; (f) the appointment of an administrator or the making of an administrative order; (g) the party being struck off the Register of Companies; (h) the appointment of a liquidator; or (i) any similar event which in the opinion of the Council is of like effect;

"New PA 2 Application" means the application for planning permission registered by the Council on 28 April 2016 under the Council's reference 16/02174/FUL to vary condition 2 of the PA 2 Permission;

"New PA 3 Application" means the applications for planning permission registered by the Council on 22 March 2016 under the Council's reference 16/01575/FUL to vary condition 4 of the PA 3 Permission;

"New PA 4 Application" means the applications for planning permission registered by the Council on 22 March 2016 under the Council's reference 16/01576/FUL to vary condition 4 of the PA 4 Permission;

"New PA 2 Permission" means the planning permission to be issued by the Council in relation to the New PA 2 Application;

"New PA 3 Permission" means the planning permission issued by the Council on 16 May 2016 in relation to the New PA 3 Application;

"New PA 4 Permission" means the planning permission issued by the Council in relation to the New PA 4 Application;

"PA 2 Permission" means the planning permission granted by the Council on 22 May 2013 under reference 13/00085/FUL for enabling works, including erection of podium structure, installation of ground source heating and cooling system and associated works;

"PA 3 Permission" means the planning permission granted by the Council on 22 May 2013 under reference 13/00095/FUL for the erection of buildings for offices retail (Class 1) and food and drink (Class 3) purposes, and alternative business (Class 4) and/or leisure (Class 11) use, retail (Class 1) and/or food and drink (Class 3) use and retail (Class 1), financial and professional services (Class 2) and/or business (Class 4) use, podium structure (including ground source heating and cooling system), car parking, access, open space and landscaping including public square, works to the south end of New Street and associated works;

"PA 4 Permission" means the planning permission granted by the Council on 22 May 2013 under reference 13/00096/FUL for the erection of buildings for residential and business (Class 4) and/or community facility, and retail (Class 1) and/or food and drink (Class 3) purposes podium structure (including ground source heating and cooling system), car parking, access, open space and landscaping including public square and pend/arcade route off Canongate, works to the south end of New Street and associated works;

## 1.1 Application of Existing Agreement

1.1.1 The parties agree that the obligations which apply to the PA2 Development, PA3 Development and PA4 Development as defined in the Existing Agreement shall apply to the New PA2 Permission, the New PA 3 Permission and the new PA4 Permission respectively. The obligations in the Existing Agreement which apply to the New PA2 Permission, the New PA3 Permission and the new PA4 Permission include but are not limited to

### 1.1.1.1 The New PA2 Permission

1.1.1.1.1 The Management Strategy for use of Public Square and Public Art Strategy which is set out at Clause 12 of the Existing Agreement

### 1.1.1.2 The New PA3 Permission

1.1.1.2.1 The Car Club Contribution obligation which is set out at Clause 5 of the Existing Agreement;

1.1.1.2.2 The part of the Pedestrian Crossings and Public Transport Information obligation which is set out at Clause 6.4 and 6.5 of the Existing Agreement;

1.1.1.2.3 The Travel Plan obligation which is set out at Clause 10 of the Existing Agreement;

1.1.1.2.4 The Management Strategy for use of Public Square and Public Art Strategy which is set out at Clause 12 of the Existing Agreement;

1.1.1.2.5 The public realm works as they apply to the PA 3 Development, as set out in Part 2 of the schedule to the Existing Agreement;

### 1.1.1.3 The New PA4 Permission

1.1.1.3.1 The Car Club Contribution obligation which is set out at Clause 5 of the Existing Agreement;

1.1.1.3.2 The part of the Pedestrian Crossings and Public Transport Information obligation which is set out at Clause 6.4 and 6.5 of the Existing Agreement;

1.1.1.3.3 The Travel Plan obligation which is set out at Clause 10 of the Existing Agreement;

1.1.1.3.4 The Management Strategy for use of Public Square and Public Art Strategy which is set out at Clause 12 of the Existing Agreement;

1.1.1.3.5 The Education Contribution and Public Realm Works set out at (1) and (2) of Part 3 of the Schedule to the Existing Agreement.

## 1.2 Release of Permission

1.2.1 In order for the New PA2 Permission to be released, the Proprietors will be required to exhibit the Keeper of the Land Register of Scotland's acknowledgement that this agreement has



been registered against the titles of the Agreement Subjects.

### 1.3 Discharge and Modification

In the event that the Proprietors wish to modify and/or discharge the whole or any part of this Agreement, the terms of Section 75A of the 1997 Act shall apply. The Proprietors shall be responsible for the Council's reasonable legal expenses and outlays properly incurred in the negotiation, drafting, preparation, completion and registration of any discharge and/or modification hereto.

### 1.4 Assignment

The Proprietors shall not transfer or assign their rights and obligations under this Agreement or dispose of their interests in the Agreement Subjects prior to the registration of this Agreement in the Land Register of Scotland, or the recording of this Agreement in the relevant Division of the General Registers of Sasines (as appropriate).

### 1.5 Arbitration

Any dispute of any kind which may arise between the parties hereto and their successors regarding this Agreement shall be referred, on the application of any party, to the decision of an Arbitrator seated in Scotland, to be mutually agreed by the parties and failing agreement appointed by the Sheriff Principal of Lothian and the Borders at Edinburgh on the application of any party and the decision of such Arbitrator, including any award of expenses, shall be final and binding on the parties subject to the provisions of the Arbitration (Scotland) Act 2010 and failing such award the cost of any such arbitration shall be borne equally by the parties.

### 1.6 Enforceability

1.6.1 This Agreement is made pursuant to Section 75 of the 1997 Act, as amended, and it is agreed by the Council and the Proprietors that the obligations undertaken by the Proprietors in this Agreement shall be enforceable at the instance of the Council as planning and roads authority against the Proprietors and persons deriving title to the Agreement Subjects or any part thereof from the Proprietors, provided always that for the purposes of section 75C of the 1997 Act, no person shall be liable for the performance, or any breach of, any obligation after they have disposed of their interest in the Agreement Subjects or the relevant part thereof, save in relation to any breach subsisting prior to disposing of such interest.

1.6.2 Nothing (contained or implied) in this Agreement shall fetter or restrict the Council's statutory rights, powers, discretions and responsibilities.

### 1.7 Registration

1.7.1 The parties consent to registration hereof for preservation and execution. The Proprietors (unless otherwise agreed with the Council) will undertake to register this agreement against the Agreement Subjects in the Land Register of Scotland as soon as reasonably practicable after the last date of execution hereof.



1.7.2 The Proprietors undertake to provide the Council with copies of any requisitions that the Keeper makes and will promptly provide to the Keeper such documentation, information or carry out such actions as may reasonably be required to allow the Keeper to register this agreement

The Proprietors undertake and warrant that (i) they shall not take steps to withdraw the application for registration of this agreement in the Land Register of Scotland without the consent of the Council, such consent not to be unreasonably withheld, and (ii) to the best of their knowledge and belief that, at the date on which they execute this agreement, they are not subject to, or under threat or warning of, any bankruptcy or insolvency proceedings, including voluntary insolvency or bankruptcy, and will not take steps to enter into any voluntary insolvency or bankruptcy arrangements between the date on which they sign this agreement and the updating of the Title Sheet by the Keeper disclosing this agreement.

## 1.8 Notices

1.8.1 All notices which require to be given in terms of this Agreement shall be in writing and shall be deemed to be sufficiently served if signed by or on behalf of the party issuing the notice and either (i) delivered personally, or (ii) sent by pre-paid recorded delivery or registered post addressed:

1.8.1.1 In the case of the Proprietors at its Registered Office and, for subsequent persons with an interest in the Agreement Subjects (if a body corporate) at its Registered Office or Head Office, and (if an individual) at his last known address in the United Kingdom and (if a partnership) to the partnership and any one or more of the partners thereof in its last known principal place of business in the United Kingdom or (in any case) at such address as the Proprietors may have notified in writing to the Council;

1.8.1.2 In the case of the Council, to the Council at its Principal Office or to such other address as the Council may have notified the Proprietors previously in writing;

1.8.1.3 and any such notice shall be deemed to have been served (i) if delivered personally, at the time of delivery, and (ii) in the case of pre-paid recorded delivery or registered post, on the second business day after the date on which the same was posted (excluding weekends and public and statutory holidays).

1.8.2 In proving service, it shall be sufficient to prove that the envelope containing the notice was duly addressed to the Council or the Proprietors, as the case may be, in accordance with this Clause and posted to the place to which it was so addressed.

Note: The "Existing Agreement" as defined in the foregoing deed is incorporated into this title sheet in terms of section 10(3)(a) of the Land Registration etc. (Scotland) Act 2012.

## Burden 9

Disposition by New Waverley 20 Limited to Legal & General Pensions Limited, registered 19 Oct 2017, of the subjects in this title ("the Property"), contains the burdens and servitudes set in the Schedule annexed hereto and the following:

## DEFINITIONS

In this disposition:-

"Date of Entry" means 16 October 2017

"Larger Property" means the subjects described and disposed in the Disposition by New Waverley 10 Limited in favour of New Waverley 20 Limited dated 7 March 2017 and currently undergoing registration in the Land Register of Scotland under Title Number MID181878

"New Burdens" means the real burdens imposed on the Property set out in Part 1 of the Schedule

"Plan 1" means the plan of the Property marked Plan 1 annexed and signed as relative to this disposition

"Plan 2" means the plan marked Plan 2 annexed and signed as relative to this disposition

"Plan 3" means the plan marked Plan 3 annexed and signed as relative to this disposition

"Plan 4" means the plan marked Plan 4 annexed and signed as relative to this disposition

"Price" means TWENTY MILLION EIGHT HUNDRED AND FORTY ONE THOUSAND SIX HUNDRED AND SEVENTY ONE POUNDS (£20,841,671) Sterling exclusive of Value Added Tax which will be payable in addition

"Property" means ALL and WHOLE the lot or area of ground at New Street, Edinburgh edged red on the cadastral map and forming part and portion of the Larger Property

"Public Access Areas" means the pavements, walkways and others at Level 00, Level-1, Level 01 and Level 02 on the ground tinted pink, tinted pink and blue, tinted brown and tinted mauve, all on the cadastral map respectively

"Public Footpath" means the footpath at Level 01 (and extending to the underside of the building constructed or to be constructed at Level 02 above) on the ground tinted yellow and hatched blue on the said map respectively

"Purchaser" means LEGAL & GENERAL PENSIONS LIMITED, incorporated under the Companies Acts in England (Registered Number 05935873) and having its Registered Office at One Coleman Street, London, EC2R 5AA

"Retained Property" means the Larger Property under exception of the Property

"Retained Servitudes" means the servitudes benefiting the Retained Property set out in Part 2 of the Schedule

"Schedule" means the schedule annexed and signed as relative to this disposition

"Seller" means NEW WAVERLEY 20 LIMITED, incorporated

under the Companies Acts in Scotland (Registered Number SC551285) and having its Registered Office at 13 Hill Street, Edinburgh, EH3 3JZ

## 2. CONSIDERATION

2.1 The Seller is the proprietor of the Property and the Retained Property.

2.2 The Seller has sold the Property to the Purchaser for the Price.

2.3 The Seller acknowledges receipt of the Price.

## 3. DISPOSITION

3.1 The Seller DISPONES the Property to the Purchaser.

3.2 The Schedule forms part of this disposition and will have effect as if set out in full in the body of this disposition.

3.3 The Property is disposed under burden of the Retained Servitudes.

## 4. BURDENS

4.1 The Property is disposed WITH AND UNDER the New Burdens.

## 5. COMMUNITY INTERESTS

The Seller declares that the transfer effected by this disposition is excluded from the operation of sections 40(1) and 37(8) of the Land Reform (Scotland) Act 2003 by virtue of section 39(5) of that Act.

## 6. NO LANDS TRIBUNAL APPLICATION

No application may be made to the Lands Tribunal for Scotland under section 90(1)(a)(i) of the Title Conditions (Scotland) Act 2003 in respect of the real burdens set out in Part 2 of the Schedule and the servitudes set out in Part 3 of the Schedule for a period of five years after the registration of this disposition in the Land Register of Scotland.

## 7. TRUST CLAUSE

7.1 Considering that the Seller has sold the Property to the Purchaser and has received payment of the whole Price in exchange for delivery of this disposition the Seller declares that the Property is held in trust for the Purchaser by it until the date of registration of this disposition (or of any substitute disposition, mutatis mutandis, required to register the Purchaser's title to the Property) in the Land Register of Scotland but solely for the purposes of holding title to the Property and of procuring registration of the Purchaser's title to the Property.

7.2 From the Date of Entry the Seller will be under no duty to maintain, preserve and insure the Property.

## 8. IMPORTING DEED OF CONDITIONS

There are imported the terms of the title conditions specified in Deed of Conditions by New Waverley 10 Limited registered 18 February 2016 and registered in the Land Register of Scotland under Title Numbers MID60240, MID60246, MID46342, MID42053, MID83645, MID85633, MID20639, MID65316, MID63173, MID76797, MID96866, MID156738, MID157572, MID157575, MID156797 and MID156739.

This is the Schedule referred to in the foregoing disposition by New Waverley 20 Limited in favour of Legal & General Pensions Limited

### Part 1

#### New Burdens

(Real Burdens affecting the Property)

The following real burdens are imposed on the Property in favour of the Retained Property:-

1. An obligation to repair, maintain and/ or renew, rebuild and reinstate the Public Access Areas.

### Part 2

#### Retained Servitudes

(Servitudes affecting the Property)

The following servitudes are imposed on the Property in favour of the Retained Property:-

1. There is reserved for the benefit of the general public, a servitude right of pedestrian access to and egress from New Street over the Public Footpath to the Retained Property under declaration that the proprietor of the Property shall not be liable for any interruption to access/ egress over the Public Footpath due to circumstances out with the control of the proprietor of the Property including for the avoidance of doubt necessary repairs, maintenance and/ or renewal of the Public Footpath.
2. There is reserved for the benefit of the general public, servitude rights of pedestrian access to and egress from the Property over the Public Access Areas to the Retained Property under declaration that the proprietor of the Property shall not be liable for any interruption to access/ egress over the Public Access Areas due to circumstances out with the control of the proprietor of the Property including for the avoidance of doubt necessary repairs, maintenance and/ or renewal of the Public Access Areas.

Note: the references on the cadastral map have been provided from Plans 1 to 4.

